



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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City of Cape Town v The South African Human Rights Commission and others (Case no 144/2021) [2021] ZASCA 182 (22 December 2021)

Today the Supreme Court of Appeal (SCA) dismissed in large part, with costs, an appeal brought by the City of Cape Town, against the interim decision of the Western Cape Division of the High Court, Cape Town (the high court). The SCA upheld an appeal against a claim for compensation.

In July 2020, a video recording of a naked man (Mr Bulelani Qolani) being dragged out of his dwelling in an informal settlement by officials of the City of Cape Town went viral on social media. Following this, the South African Human Rights Commission (the SAHRC), Mr Qolani and the Housing Assembly (a social justice movement) launched an urgent application in the high court to prevent the City of Cape Town (the City) from evicting persons and demolishing structures, whether occupied or unoccupied, during the national state of disaster, without a court order. The application was for interim relief (Part A), pending a decision on Part B, which primarily dealt with the constitutionality of the City's conduct and its Anti-Land Invasion Unit (ALIU), which carried out the evictions and demolitions, and whether the defence of counter-spoliation permitting the eviction and demolition of a structure, occupied or unoccupied was constitutional. The high court also granted the Economic Freedom Fighters (EFF) and the occupiers of Erf 544, Mfuleni (the Occupiers) leave to intervene as interested parties. The latter sought additional relief that the City must provide each household, whose dwelling was destroyed, with the equivalent building materials and that each occupant of the property be paid R2000 as compensation for the loss of their personal possessions. The high court granted Part A, pending the determination of Part B. The orders sought by the intervening parties were also granted, subject to minor amendments.

In the SCA the City of Cape Town was the appellant; SAHRC was the 1st respondent; the Housing Assembly the 2nd respondent; Mr Bulelani Qolani was the 3rd respondent; the 4th respondent was the EFF and the Occupiers were the 5th respondents. The 6th to 10th respondents were state respondents who did not participate in the appeal.

The hearing of Part B was finalised on 5 November 2021 by a full court of the Western Cape and judgment was reserved. The respondents agreed that this appeal was now to all intents and purposes moot. The City persisted with its appeal despite the imminent judgment of the full court, on the basis that the court a quo did not apply the correct test in finding that the requirements for interim interdictory relief had been met.

The SCA relied on the principles set out in *Zweni v Minister of Law and Order* [1993] 1 All SA 365 (A) that an order is appealable if the decision is final in effect and not susceptible to alteration by a court of first instance; if it is definitive of the rights of the parties; and if it has the effect of disposing of a substantial part of the case. The SCA held that on comparing the interim orders sought to be appealed with those sought in Part B, it was clear that the decision was not final in effect as these orders would be reconsidered by the full court in Part B. The only issues excluded from the determination of the full court was the question of the return of the building materials seized by the ALIU; the compensation of R2000 in lieu of loss of personal belongings and the question of costs. Nonetheless, the SCA was called upon to address all the interim orders made, without exception.

Next the SCA considered whether there would be irreparable harm or a grave injustice to the City if any interim orders were not set aside. The SCA found that it was difficult to conceive of a situation where judicial oversight of evictions and demolitions could ever amount to irreparable harm. The City was not precluded from evicting persons but merely prohibited from doing so without judicial supervision. The orders were not final in effect and there would be no irreparable harm if the interim orders were not set aside. The appeal in respect of those interim orders had to be dismissed.

The SCA found that the only issue, other than costs, which the determination of Part B would not finally resolve, was the monetary compensation of R2000 in lieu of loss of personal belongings and the return of the building materials. The SCA found that the relief sought therein was final and not of an interim nature and should not have been awarded in interim proceedings. In addition, there was insufficient detail on the papers as to the nature of the items taken and from whom they had been taken. The appeal was successful in this regard.

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