

THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Rustenburg Local Municipality v Vincent Mdango and others (937/13)
[2014] ZASCA 83 (30 May 2014)

Today, the Supreme Court of Appeal (SCA) handed down a judgment in an appeal and a cross-appeal from the North West High Court, Mafikeng. The high court had granted an eviction order against the respondents, being various occupiers of certain RDP houses in a township within the jurisdiction of the appellant (the municipality). That order was suspended pending the availability of suitable accommodation or land for their resettlement.

In 2007 the respondents had invaded the RDP houses owned by the municipality, which had been due to be allocated to approved applicants. In 2011 the municipality launched an application in the high court and sought an order for the respondents' eviction pursuant to the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (PIE). While the municipality had joined both the MEC for Human Settlement, Public Safety and Liason(MEC), North West and the Minister of Rural Development and Land Reform(the Minister), neither participated in the proceedings either before the high court or on appeal. As a result, no information relating to the availability of suitable alternative accommodation or land was put before the court.

The high court, in finding that the respondents were in unlawful occupation of the RDP houses, lamented the paucity of information before it but nevertheless held that it would be just and equitable to order the respondents' eviction. That order was then suspended pending the availability of suitable accommodation or land for their resettlement. Both parties were dissatisfied with the outcome and the high court granted them leave to appeal and cross-appeal respectively.

In this court the issues were twofold, namely, whether it was just and equitable to evict the respondents; and whether the court below erred in suspending the eviction order.

The SCA referred to the applicable legal framework including decisions of this court and of the Constitutional Court relevant to the issue. The court held that it was imperative that a court seized with an application in terms of section 4 or 6 of PIE should take all relevant factors into consideration before granting an eviction order. Further, that it was undesirable for the courts to make orders of eviction where the information regarding such factors were lacking or insufficient, as the court would be unable to determine what is just and equitable in the circumstances. In the present case, this court noted its concern with the paucity of information before the high court. In this regard, it held that the respondents, who have been in occupation of the property since 2007, should have submitted to the high court their personal circumstances including the rights and needs of the elderly, the children, disabled persons and households headed by women. Furthermore, the municipality was obliged to submit a report about any steps taken by it to provide alternative suitable accommodation to the respondents and that the MEC's input was crucial to the determination of whether it was just and equitable to evict the respondents.

In the result, this court set aside the order of the high court and remitted the matter to the high court for reconsideration. The MEC, the municipality and the respondents were ordered to place all relevant information before that court to enable it to make a proper determination of the issues.