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

DATE 18 May 2016

STATUS Immediate

City of Johannesburg v Dladla & others (403/15) [2016] ZASCA 66 (18 May 2016)

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

This morning the Supreme Court of Appeal (SCA) upheld an appeal against an order in the South Gauteng High Court, Johannesburg and replaced that order with one dismissing the application with costs. The high court had set aside certain rules of an urban shelter as being constitutionally invalid.

The respondents in the appeal are residents at the Ekuthuleni Shelter. Metropolitan Evangelical Services (MES), a company incorporated not for profit in terms of s 21 of the Companies Act 71 of 2008 operated the Shelter. It is a community based, Christian organisation.

The occupiers had been evicted from a dilapidated building in Saratoga Avenue, Berea, Johannesburg. The Constitutional Court, in a case well known as '*Blue*

Moonlight', stipulated that the City was to provide the evictees with 'temporary accommodation in a location as near as feasibly possible to the area' in which Saratoga was situated.

The City engaged the services of MES to provide the kind of temporary accommodation in question. The house rules of the Shelter included the regulation of food being prepared and consumed in a dining room area, provisions that the use of electrical appliances such as stoves, heaters, television sets and radios in bedrooms were prohibited, that violence, abusive language and unruly behaviour were not allowed, that drugs, alcohol and dangerous weapons were not permitted and that those who entered the premises under the influence of drugs or alcohol could be required to vacate until they returned sober. Each of the occupiers in writing agreed to be bound by these rules but 'reserved' his or her rights.

The primary purpose of the rules was not merely to ensure the safety and protection of the occupiers but also to encourage residents to get out into the world, to familiarise themselves with it and, so it is intended, find gainful employment, even if only in the informal sector. The costs of allowing permanent access to and egress from the Shelter would increase its running costs substantially, by reason of the increased costs in staff, supervision and wear and tear. These rules were challenged by the occupiers as being unconstitutional. The court a quo found that this was indeed so.

The design of the Shelter consists of 30 small dormitories, consisting of two to four bunks per dormitory. The dormitories were gender differentiated. The gender differentiation arises from the fact that each dormitory sleeps more than two persons. The unarticulated but self-evident premise of this gender differentiation is that it is required according to widely prevailing norms of modesty and decency in society. The policy of gender differentiation has the consequence that the occupiers do not share the same room with their spouses or life partners. This separation of the occupiers from their spouses or life partners was also subject to constitutional challenge. Here again, the court a quo found in favour of the occupiers.

The SCA affirmed that husbands and wives and permanent life partners have a constitutional right to live together. The SCA found that husbands and wives and permanent life partners do not have the right, always and everywhere, to sleep together. There are instances in which this right must yield, albeit temporarily, to broader practical demands such as those related to the reason for which the Shelter was designed. In context, the provision of temporary accommodation separated on the basis of gender, is not unreasonable and therefore not unconstitutional.

The SCA found that the rules of MES in the Shelter offered by the City, in an attempt to accommodate the occupiers in an emergency situation are not, in themselves, unreasonable and that the appeal must succeed.