THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 636/23

In the matter between:

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	**FIRST APPELLANT**
THE EXECUTIVE MAYOR, CITY OF JOHANNEBURG	**SECOND APPELLANT**
THE CITY MANAGER, CITY OF JOHANNESBURG	**THIRD APPELLANT**
THE DIRECTOR OF HOUSING, CITY OF JOHANNESBURG	**FOURTH APPELLANT**

and

OCCUPIERS OF [PORTION 971 OF THE FARM RANDJESFONTEIN NO 405	**FIRST RESPONDENT**
RYCKLOFF-BELEGGINGS (PTY) LTD	**SECOND RESPONDENT**
THE INTERNATIONAL COMMISSION OF JURISTS	**AMICUS CURIAE**

Neutral Citation: *The City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 971 of the Farm Randjesfontein No 405] and Others* (636/23) [2024] ZASCA 47 (23 April 2025)

Coram: MAKGOKA, SCHIPPERS and MOTHLE JJA and HENDRICKS and NAIDOO AJJA

Heard: 27 August 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand down is deemed to be 23 April 2025 at 11h00.

Summary: Property law – Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE) – eviction of unlawful occupiers – emergency temporary accommodation – whether a municipality obliged to consider an unlawful occupier's right to earn a living when determining emergency temporary accommodation – intersection between s 28 of the Constitution and s 4(7) of PIE.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Wright J sitting as court of first instance):

The following order shall issue:

1 Paragraph 2(b) of the high court's order is amended and the City of Johannesburg Metropolitan Municipality is directed to provide temporary emergency accommodation for the first to the seventy-first Occupiers of the farm Randjesfontein number 4005 as specified in that paragraph, within sixty (60) days of the date of this Court's order.

2 Save as aforesaid, the appeal is dismissed with costs, including costs of two counsel where so employed.

JUDGMENT

Mothle JA (Makgoka and Scheepers JJA and Hendricks and Naidoo AJJA concurring):

[1] This appeal raises our country's perennial problem – homelessness. In President *of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd*[1] the Constitutional Court remarked as follows:

'The problem of homelessness is particularly acute in our society. It is a direct consequence of apartheid urban planning which sought to exclude African people from urban areas, and enforced this vision through policies regulating access to land and housing which meant that far too little land and too few houses were supplied to African people. The painful consequences of these policies are still with us eleven years into our new democracy, despite government's attempt to remedy them. The frustration and helplessness suffered by many who still struggle against heavy odds to meet the challenge merely to survive and to have shelter can never be underestimated. The fact that poverty and homelessness still plague many South Africans is a painful reminder of the chasm that still needs to be bridged

[1] *President of the Republic of South Africa v Modderklip Boerdery* 2005 (5) SA 3 (CC) para 36.

before the constitutional ideal to establish a society based on social justice and improved quality of life for all citizens is fully achieved.'

Two decades later, despite a plethora of legislation and case law, the problem persists.

[2] The first to fourth appellants are respectively; the City of Johannesburg Metropolitan Municipality (the City), the Executive Mayor, the City Manager and the Director of Housing, collectively referred to as 'the City'. The first to seventy-first respondents are the Occupiers, who are in unlawful occupation of Portion Erf 971 of the Farm Randjiesfontein no. 404, situated in Midrand, within the municipality of Johannesburg, (the property). The property belongs to the seventy-second respondent, Rycloff-Bellegings (Pty) Ltd (*Rycloff)*. The City appeals against the judgment and orders of the Gauteng Division of the High Court, Johannesburg (the high court). That court, at the instance of Rycloff, granted an order of eviction against the first respondent (the Occupiers) and ordered the City to provide them temporary emergency accommodation (TEA) subject to a condition that: 'The land chosen by the City shall be land where the 1st to 71st respondents can live at night and there lawfully and safely sort the reclaimed waste and from where they can reasonably go during the day to use their flat-bed trollies lawfully and safely to collect waste'. It is against this order (the impugned order) that the City appeals, with the leave of the high court. The International Commission of Jurists *(ICJ)* was admitted in this Court as Amicus Curiae.

[3] The Occupiers eke out a living as waste pickers. This they do by extracting from the waste, recyclable materials from industrial sites located near the property and transporting it to the property on flat-bed trollies. On arrival at the property, they sort, clean and store the materials in industrial bags, with a view to selling the stored materials to recycling companies. In order to do this work, which is their sole source of income, the Occupiers have built shacks on the property, where they reside with their families.

[4] Adjoining the property is Erf 64 Midridge Park, Extension 9, also owned by Rycloff. The latter property houses a large commercial business centre, the

International Business Gateway. Rycloff is in the process of finalising an offer to lease and redevelop Midridge Park, valued at R456 461 243.66. The prospective lessee is not willing to proceed with the envisaged development, because of the Occupiers' continued occupation of the property neighbouring Midridge Park. It became obvious that the continued presence of the Occupiers on the property would be an impediment to the envisaged development.

[5] On 22 May 2019, Rycloff launched an application for eviction of the Occupiers from the property, in terms of s 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). A plethora of interlocutory applications over delay in the acquisition of suitable temporary emergency accommodation, supervised orders for relocation of the Occupiers and contempt of court applications ensued, and continued for about three years. During this period, several sites for relocation were identified, but the City and the Occupiers could not reach an agreement on a suitable site to which the Occupiers could be relocated. The Occupiers preferred alternative accommodation nearer the industrial sites, in order to continue their waste-picking activities. In 2022, the City identified Erf 128 Kya Sands Informal Settlement (Kya Sands), as the relocation destination acceptable to both parties. However, the City imposed a condition for relocation to Kya Sands, that the Occupiers would not be allowed to conduct their waste picking activities on the identified site. The Occupiers objected to that condition.

[6] The eviction application eventually came before the high court, which granted an eviction order against the Occupiers. In paragraph 2 of its order, the high court directed that the City must, by no later than 4 March 2023, on land of its choice but within the municipal area of the City, provide temporary emergency accommodation for the occupiers, subject to certain conditions. The condition, which is the source of the dispute in this appeal, is stated in paragraph 3 of the high court's order. Dissatisfied with the impugned order, the City sought and was granted leave by the high court to this Court, specifically against the impugned order.

The parties' contentions

[7] The City contends, first, that the 'right to earn a living', which it submits is essentially a 'commercial interest', is not relevant to the determination of what is just

and equitable in terms of s 4(7) of the PIE Act. Related to that, it was submitted, the section does not afford an unlawful occupier the right to choose where they wish to live, upon eviction. Second, that the collection, sorting and storing of material from waste by the Occupiers, is an unlawful activity, as it is conducted in an area zoned 'special', contrary to the relevant zoning regulations.

[8] The Occupiers submitted, in the main, that the eviction would not be just and equitable, if it did not take into account their means of earning a living, i.e. if they are not relocated close to areas which create high value waste for them to collect, store and sell extracted recyclable material, to the recycling companies. They further relied on s 26(3) of the Constitution,[2] to contend that the City has an obligation to act reasonably, as the right to earn a living is a component of the right to dignity.

[9] The thrust of Rycloff's submission was that the high court order exceeds what is envisaged in s 26(3) of the Constitution read with s 4 of the PIE Act. Further, that the impugned order offends the separation of powers doctrine in that it deprives the City of its discretionary power to identify suitable temporary emergency accommodation, which is congruent with the prevention of homelessness and the balancing of competing interests that the City must consider.

[10] ICJ advanced three submissions in support of the Occupiers: (a) the role of both binding and 'non-binding' international law; (b) the State's obligations relating to the rights to housing and work in the context of international human rights law; and (c) the eviction of occupiers which results in reduced access to existing work opportunities, would also result in a violation of the rights of the children of the occupiers.

[11] Before I consider these submissions, it is important to state what the case is not about. It is not about whether the Occupiers wish to be relocated to a temporary emergency accommodation of their choice. Both the City and the Occupiers agree that Kya Sands should be the destination for relocation. The dispute is whether the Occupiers should continue to 'earn their living', at Kya Sands. In this regard, the

[2] Constitution of the Republic of South Africa, 1996.

protagonists in the dispute are thus the City, supported by Rycloff on the one side and the Occupiers, supported by ICJ on the other.

[12] The PIE Act primarily gives expression to the right of access to adequate housing as provided for in s 26 of the Constitution. It regulates the circumstances under which evictions may be conducted. The Constitutional Court in *Port Elizabeth Municipality v Various Occupiers*,[3] set out the history of evictions under the then government policy of apartheid, and the enactment of the PIE Act, following the advent of constitutional democracy. In essence, the PIE Act is intended to prevent the erstwhile arbitrary and violent evictions and forced removals that were a cornerstone of apartheid laws. Section 4(7) of the PIE Act, provides:

'If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.'

[13] Section 4(7) has been crafted such that the manner by which evictions are conducted, respects the constitutional rights of occupiers, in particular the vulnerable amongst them. It does not expressly oblige a municipality to provide for temporary emergency accommodation for evicted occupiers. Our courts have applied a wide interpretation to s 4(7). Recently, in *Charnell Commando v City of Cape Town*[4] (*Charnell*), the Constitutional Court considered a municipality's failure to develop a policy addressing temporary emergency accommodation, in dealing with a homelessness crisis. The municipality instead applied a housing plan, intended as a

[3] *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2004 (12) BCLR 1288 (CC); 2005 (1) SA 217 (CC) from para 8.
[4] *Charnell Commando and Others v City of Cape Town and Another* [2024] ZACC 27; 2025 (13) BCLR 248 (CC) para 84.

long-term solution. The majority judgment, following *City of Johannesburg v Blue Moonlight Properties*,[5] held:

'I acknowledge that the City operates within finite resources and must make difficult decisions about how to allocate those resources most effectively to meet the needs of its diverse population. However, a lack of resources cannot be accepted as an excuse in the present circumstances, because that is simply not the reasoning behind its failure to prioritise emergency housing. The availability of resources is evident. The City cannot hide behind the argument that it is providing social housing in the inner city by disregarding its crucial responsibilities in relation to emergency housing. Those whose needs are most urgent and whose ability to enjoy all rights is most in peril, must not be ignored. The City's commitment to long-term social housing plans should not come at the expense of addressing urgent concerns. This is particularly the case when one considers the applicable waiting lists prevalent in the applications for state-subsidised housing and the policies against queue-jumping. The right of access to adequate housing, especially in emergency situations, is a fundamental human right that demands immediate attention. This Court cannot ignore the City's failure to progressively realise its constitutional obligation in terms of section 26 as far as emergency housing is concerned.'

[14] The courts are empowered to exercise a broad discretion, to ensure that the evictions are conducted in a just and equitable manner. In determining what is just and equitable, a court cannot ignore a possible breach of other constitutional rights, including socio-economic rights. As submitted by the ICJ, South Africa ratified the United Nation's International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 January 2015, to deepen the enforcement of socio-economic rights in our Bill of Rights. In this regard, s 39(1) of the Constitution provides that the courts must consider international law, and s 39(2) provides that when interpreting legislation, the courts must promote the spirit, purport and objects of the Bill of Rights.

[15] The issue for determination is whether a court ordering an eviction under s 4(7) of the PIE Act must, as part of just and equitable enquiry, consider an

[5] *City of Johannesburg v Blue Moonlight Properties* 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011). In this case, the Court identified the obligation to plan to provide housing in instances of emergency. Thus, it developed jurisprudence on the right to alternative accommodation as a shield against homelessness in addition to other existing housing programs.

occupier's 'right to earn a living'. As mentioned, the City considers the Occupiers' activities unlawful, as according to it, the Occupiers conduct a *waste recycle business* and are therefore involved in a 'commercial interest' activity which, it submits, falls outside the purview of s 4(7) of the PIE Act. On the other hand, the Occupiers characterised their activity as *collecting, sorting and storing* material extracted from waste, to sell it to recycling companies.

[16] However, the City's view is contradicted in a letter dated 26 September 2022, from the City's own attorneys, addressed to Seri Law Clinic representing the Occupiers. Paragraphs 3.1 and 3.2 of that letter state:

'The City has no interest in encroaching on your client's ability to earn a living, however the City is not obligated by any statute or policy to provide Temporary Emergency Accommodation (TEA) that would enable the continuation of your clients *recycling activities*.

The City has endeavoured (as an indulgence to your clients) to find TEA that would cater for your client's needs. In this respect, and coincidentally, erf 128 Kya Sands is situated next *to a recycling facility*.' (Own emphasis.)

[17] Recycling is defined by s 1 of the National Environmental Management: Waste Act 59 of 2008 (the Waste Act) as 'a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material'. The organs of State in all spheres of government are enjoined to implement the provisions of the Waste Act, including taking uniform measures that seek to reduce the amount of waste generated by business or domestic entities.

[18] The activities of waste pickers are described in the expert report filed by Dr Samson,[6] in which he states:

'Waste picking is prevalent in unequal societies, where a person is sufficiently wealthy to throw away used commodities that retain value and other residents being so poor that they are willing to go through their waste to generate a relatively small income to support themselves and their families.

Waste pickers perform several stages of work before they sell materials they have salvaged. These include waking early (often by 4 am); travelling by foot (most frequently with a trolley)

[6]Volume 5, p 817 of the record.

to high income suburbs; salvaging materials from bins; travelling home by foot, this time with a trolley that can carry up to 200 kgs of recyclables. When they are not salvaging, the waste pickers must then classify the recyclables into different categories, do rudimentary cleaning of the materials, prepare the materials for sale, and then transport the materials, again by foot, to sell to buyback centres or another kind of buyer.
Waste pickers' incomes are low, as they are currently only paid for the sale of the recyclables and not for their services. Prices are so low as this is the bottom level of the global recycling value chain and many actors seek to extract profits before the final sale of the materials for recycling.'

[19] It is clear that we are here dealing with the *collection*, *sorting and storing* of recyclable material at Kya Sands, and not recycling in the sense of commercial interests, as characterised by the City. Waste picking occurs at different levels, including instances where people ordinarily produce waste while cleaning their homes. The waste is often separated from re-usable materials, before its disposal at municipal dump sites.

Section 4(7) of the PIE Act and commercial interests.

[20] I turn now to the City's submission, which is two-pronged. First, that the right to work amounts to a commercial interest, which is not protected by the PIE Act. For this contention, the City relied on *Turnover Trading 191 (Pty) Ltd v Moshela and Others*[7] *(Turnover*). There, it was held that an unlawful occupier is not entitled to resist eviction on the basis that the business undertaking conducted on another's property, is the source of their livelihood.

[21] The present case is distinguishable from *Turnover*. First, in that case, the occupier resisted eviction on the basis that he wished to continue conducting business on the property. In the present case, the Occupiers are not resisting eviction. They join issue with the relocation to a place where they would not be able to earn a living at. Second, in this case, as noted by the high court, there are children, as well as households headed by women – two vulnerable groups in society specifically mentioned in s 4(7) of the PIE Act. In *Turnover*, the high court judgment specifically records that the question of children did not arise. Therefore,

[7] *Turnover Trading 191 (Pty) Ltd v Moshela and Others* [2020] ZAGPPHC 240 para 33.

the City's reliance on *Turnover* as authority prohibiting sorting and storing of recyclable material, is inapposite.

[22] What is more, both this Court and the Constitutional Court have recognised that the right of Occupiers to earn a living is a relevant factor to be considered by a court in terms of s 4(7) of the PIE Act. For example, in *City of Johannesburg v Rand Properties (Pty) Ltd*,[8] this Court acknowledged the link between the location of residence and employment opportunities. The Court stated as follows: '*Obviously, the State would be failing in its duty if it were to ignore or fail to give due regard to the relationship between location of residence and the place where persons earn or try to earn their living.*'

[23] This was confirmed by the Constitutional Court in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*[9] , thus:

'Some of the reasons advanced by the residents for refusing to relocate to the TRUs in Delft are a lack of schools and other amenities and *a lack of employment*. What must be stressed here is that relocation is necessary to develop Joe Slovo so that decent housing can be built there. This will benefit the residents. Moreover, the Constitution does not guarantee a person a right to housing at government expense at the locality of his or her choice. Locality is determined by a number of factors including the availability of land. *However, in deciding on the locality, the government must have regard to the relationship between the location of residents and their places of employment*.' (Own emphasis.)

[24] In *Dladla v City of Johannesburg*[10] the Constitutional Court considered conditions the City had imposed on occupiers whom it had granted temporary accommodation. Those were that: (a) the occupiers should be out of the accommodation between 08h00 and 17h30 every day and return by 20h00; (b) men and women were prohibited from living together through the provision of single-sex dormitories; (c) children were separated from their caregiver depending on their age.

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[8] *City of Johannesburg v Rand Properties (Pty) Ltd* [2007] ZASCA 25; [2007] 2 All SA 459 (SCA); 2007 (6) SA 417 (SCA); 2007 (6) BCLR 643 (SCA) para 44.

[9] *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, as Amici Curiae)* [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC) para 254.

[10] *Dladla and Another v City of Johannesburg and Others* [2017] ZACC 42; 2018 (2) BCLR 119 (CC); 2018 (2) SA 327 (CC).

The Constitutional Court declared these unconstitutional. It defined the State's duty to provide temporary accommodation in the following terms:

'Temporary accommodation of necessity entails more than just providing a roof and four walls; it must include all that is reasonably appurtenant to making the temporary accommodation adequate. The provision of housing entails not only the delivery of a building or tent. The conditions the state attaches to the accommodation are part of its provision. Therefore, any rules the Shelter implemented to regulate the conduct of its inhabitants necessarily informed the adequacy of the housing it was providing. It cannot be that the provision of temporary accommodation implicates section 26(2) while rules designed to fulfil that provision do not.'[11]

[25] As mentioned, in this Court, the City first contended that '*the waste recycling activity as conducted by the Occupiers, is [per se] unlawful*.' However, counsel for the City could not point to any authority for this proposition. The debate veered to the question whether the sorting and storing of material extracted from waste, is prohibited by the municipal zoning by-laws. It was submitted on behalf of the City that Kya Sands was zoned 'special', even though in the City's heads of argument it is designated as a residential area. To clarify this aspect, the parties were directed to submit the by-law on the zoning of the land to which the Occupiers are to be relocated, including further submissions on that issue. Both the City and the Occupiers complied, as directed.

[26] Attached to the City's further submissions, were the Johannesburg Land Use Scheme, 2018 (the scheme) and a copy of the Zoning Certificate for Erf 128 Kya Sands. The City submits that Kya Sands is zoned 'Special Use' and the Zoning Certificate has an annexure which indicates that Kya Sands shall be used solely for public road.[12] Considering the scheme and the absence of a prohibition policy consistent with the Waste Act, there is no support for the City's contention, concerning the alleged unlawfulness of the Occupiers' waste picking, based on the municipal zoning.

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[11] Ibid para 57.

[12] The City has also attached the copies of Zoning Certificates of Portions 46 and 51, zoned as 'agriculture' and whose relevance to this case is not explained.

[27] Any municipal zoning which involves human activity, such as business, industrial, residence, agriculture or special zoning, will undoubtedly produce waste, whose disposal must be managed in terms of the environmental laws. The City failed to refer to any law or policy which prohibits waste collection, sorting and storing in any specified area. The Waste Act, the Regulations, by-laws or policy documents that deal with waste management were not referred to nor attached. No case was made out which demonstrates any breach, or potential breach of any legal provisions. On the contrary, the Waste Act and its Regulations encourages waste collection as part of the prevention of environmental degradation.

[28] The high court conducted an inspection *in loco* at the property. The note of the inspection indicates that there are communal areas with seating, which is kept neat and tidy. It has well-maintained vegetable gardens and the waste is stored in 'several rows of neatly sorted recyclable waste, contained in industrial sized bags.'[13] The material transported to the Occupiers' shacks to later sell to recycling companies is not the waste, but the extracted recyclable materials of the waste.

[29] The case of the Occupiers, supported by the ICJ, is grounded on the occupiers' right to dignity, finds expression within the context of socio-economic rights. The Occupiers submit, on authority of the decision in *Dladla* that the City must act reasonably in giving effect to the rights in s 26(3) of the Constitution, with reference to socio-economic rights, to protect the dignity of the Occupiers. This approach is also supported by the majority in *Charnell*,[14] where the Constitutional Court stated thus:

'In determining if a set of measures are "reasonable", the measures ought also to be scrutinised within their social, economic and historical context. A housing programme must be balanced, consider all sections of society, be flexible, and be able to reasonably respond progressively to housing crises and short, medium and long-term needs. To be reasonable, there must be sufficient weight towards the most needy and vulnerable, so that they can live in conditions of dignity, equality and freedom guaranteed by the Bill of Rights. The state will be failing in its constitutional duties unless it takes reasonable steps towards addressing the needs of the most vulnerable groups.'

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[13] Volume 10 p 1940, para 5.
[14] *Charnell Commando and Others v City of Cape Town and Another* [2024] ZACC 27; 2025 (13) BCLR 248 (CC) para 73.

[30] The minority judgment in *Charnell*[15] agrees with the majority judgment on the role of socio-economic rights in giving effect to the right to dignity when dealing with socio-economic rights, as follows:

'Socio-economic rights in the South African Constitution have two important foundations. The first is universalistic in nature and rooted in the notion that every individual is entitled to be treated with dignity and, as such, must be provided with the necessary conditions for living a life of dignity. That idea has been behind the recognition of these rights at the international level in the Universal Declaration of Human Rights and enshrined in the binding ICESCR. South Africa signed the ICESCR on 3 October 1994 and ratified it on 12 January 2015: that change in the legal status of the ICESCR is an important development for this Court to grapple with.

….

This case implicates both these foundations of a central socio-economic right: the right to have access to adequate housing enshrined in section 26 of the Constitution. The B[...] residents are facing eviction and potential homelessness. The duty on the state to ensure dignified treatment of persons facing eviction and to be provided with alternative accommodation has been established by legislation – in the form of the PIE Act – and by this Court. This is also a community that, against all odds, survived in inner city Cape Town against a sustained onslaught of forced removals and the attempted banishment of people classified by the apartheid government as Black or Coloured from this area in pursuance of spatial apartheid in terms of the various iterations of the Group Areas Act. To allow their removal from that area would consolidate the legacy of apartheid rather than undermine it.' (Footnotes excluded)

[31] In this regard, the CESCR General Comment No. 4 (the General Comment) is important. It concerns the right to adequate housing as provided in article 11(1) of the CESCR,[16] and recognises the indivisibility, interdependence and interrelatedness of human rights.[17] One of the defining features of what constitutes adequate housing in the General Comment is the location, in respect of which the General Comment states:

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[15] Per Bilchitz AJ with Dodson AJ concurring at paras 117 and 119.

[16] International Covenant on Economic, Social and Cultural Rights, often referred to as second generation rights or group rights.

[17] Vienna Declaration and Programme of Action adopted on 25 June 1993 at the Second World Conference on Human Rights.

'Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households.'[18]

[32] This principle was confirmed by the Constitutional Court in *Dladla* as stated in paragraph 24 of this judgment. The City in the present case acted unreasonably by seeking to subject the relocation of the Occupiers to a condition that prevents the latter from earning a living at the temporary emergency accommodation. This condition fails to recognise the principle that human rights are indivisible, interdependent and interrelated.

[33] First, the City misconstrued the conduct of the Occupiers as recyclers, when in effect, they are reclaimers who collect and sell waste material to recyclers for re-use. Second, the City sought to rely on the municipal zoning as prohibiting the sorting and storing of waste material, when it does not do so. Third, the City's condition is not supported by any law or policy and is thus arbitrary, irrational and unreasonable. In the circumstances, the appeal must fail.

[34] Since the terms of the high court order concerning the envisaged relocation dates are no longer capable of implementation due to the lapse of time as a result of the appeal, it is necessary and appropriate for this Court to intervene. Consequently, the high court order must be dismissed. The City has been unsuccessful, in terms of the *Biowatch* principle[19] and should accordingly be ordered to pay the costs.

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[18] Ibid at 4.
[19] *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

[35] The following order shall issue:

1 Paragraph 2(b) of the high court's order is amended and the City of Johannesburg Metropolitan Municipality is directed to provide temporary emergency accommodation for the first to the seventy-first Occupiers of the farm Randjesfontein number 4005, as specified in that paragraph, within sixty (60) days of the date of this Court's order.

2 Save as aforesaid, the appeal is dismissed with costs, including costs of two counsel where so employed.

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S P MOTHLE

JUDGE OF APPEAL

Appearances:

For appellants:	C Georgiadies (with him N Mahlangu)
Instructed by:	BM Kolisi Inc., Johannesburg
	Phatshoane Henny Attorneys, Bloemfontein
For 1st respondent:	I de Vos (with her O Mohlasedi)
Instructed by:	SERI Law Clinic, Johannesburg
	RC Ishmail Attorneys, Bloemfontein
For 2nd respondent:	WR Mokhare SC (with him M Majozi)
Instructed by:	Werksmans Attorneys, Johannesburg
	Symington de Kock Inc., Bloemfontein
For Amicus Curiae:	A de Vos SC
Instructed by:	Lawyers for Human Rights, Pretoria
	Webbers, Bloemfontein.