THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No.: 734/2017

In the matter between:

STEVEN NGOMANE	**FIRST APPLICANT**
GEORGE MATHE	**SECOND APPLICANT**
PULE MANKGE	**THIRD APPLICANT**
PAKISO NDUNGWANE	**FOURTH APPLICANT**
SYDNEY KHUMALO	**FIFTH APPLICANT**
MOREMI TSHEPO EVANS	**SIXTH APPLICANT**
GIFT MTHIMKHULU	**SEVENTH APPLICANT**
ANNA KHUMALO	**EIGHTH APPLICANT**
LERATO JOSEPH MDONGWANE	**NINTH APPLICANT**
MORRIS MTHEMBU	**TENTH APPLICANT**
SBUSISO NKOSI	**ELEVENTH APPLICANT**
DAVID THLAPI	**TWELTH APPLICANT**
HLENGIWE KHUMALO	**THIRTEENTH APPLICANT**
SEUN MSIBI	**FOURTEENTH APPLICANT**
SIMON MATHE	**FIFTEENTH APPLICANT**
THABO MATHE	**SIXTEENTH APPLICANT**
THULANI NGOZO	**SEVENTEENTH APPLICANT**
BUTI MADUNA	**EIGHTEENTH APPLICANT**
MICHELLE MOFOKENG	**NINETEENTH APPLICANT**
THAPELO SEKWATI	**TWENTIETH APPLICANT**
JABULANI THEO PHAKATHI	**TWENTY FIRST APPLICANT**
MATHEWS MBANA	**TWENTY SECOND APPLICANT**
JACOB THAMSANQA GCISA	**TWENTY THIRD APPLICANT**

LERATO NHLAPO **TWENTY FOURTH APPLICANT**

EPHRAIM MANDENGA **TWENTY FIFTH APPLICANT**

EMMANUEL NOVEMBER **TWENTY SIXTH APPLICANT**

DOCTOR SHOPE **TWENTY SEVENTH APPLICANT**

and

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY **FIRST RESPONDENT**

CHIEF OF POLICE, JOHANNESBURG METROPOLITAN POLICE DEPARTMENT, ZWELIBANZI VELAPHI NYANDA N O **SECOND RESPONDENT**

Neutral citation: *Ngomane & others v City of Johannesburg Metropolitan Municipality & another* (734/2017) [2019] ZASCA 57 (03 April 2019)

Coram: Maya P, Dambuza, Van der Merwe and Schippers JJA and Nicholls AJA

Heard: 10 September 2018

Delivered: 3 April 2019

Summary: Constitutional law – ss 38 and 172 (1)(*a*) and (*b*) of the Constitution – municipality removing and destroying property comprising personal effects and materials used to erect overnight shelter belonging to the homeless applicants in a public health law clean-up exercise – not an eviction – applicants not entitled to *mandament van spolie* or mandatory substitution of the property – destruction of property unlawful and a breach of applicants' rights to dignity, privacy and not to be deprived of their property – declaration of the unlawfulness of the destruction of the applicants' property and compensation therefor appropriate relief.

ORDER

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

1 The application for leave to appeal and condonation for its late filing is granted.

2 The appeal is upheld with costs including the costs of two counsel.

3 Paragraph 1 of the order of the court a quo is set aside and replaced with the following:

'(a) it is declared that the destruction of the applicants' property listed in the applicants' schedule of reported losses annexed to the founding affidavit, by the first respondent on 1 February 2017, was unconstitutional and unlawful.

(b) The first respondent shall pay each applicant the sum of R1 500 as compensation for the destruction of his or her property on 1 February 2017, within 30 calendar days of the date of this order.

(c) The respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved.'

JUDGMENT

Maya P (Dambuza, Van der Merwe, Schippers JJA and Nicholls AJA concurring):

[1] The applicants are a group of destitute, homeless people who made a home

for themselves on a traffic island under the R31 highway bridge on End Street, between Durban and Meikle Streets, in the business district of the City of Johannesburg Metropolitan Municipality (the City). They seek leave to appeal and condonation for the late filing therefor, against the judgment of the Gauteng Local Division of the High Court, Johannesburg (R Sutherland J). The court a quo dismissed their application for the return of their personal belongings and materials, alternatively to be provided with similar material and possessions, confiscated by officials of the Johannesburg Metropolitan Police Department (JMPD) from the traffic island, and ancillary relief. The court a quo refused their subsequent application for leave to appeal against that decision and, upon further application to this Court, their application was referred for oral argument in terms of s 17(2)(*d*) of the Superior Courts Act 10 of 2013.[1]

[2] According to the applicants, they had lived under the bridge for significant periods of time and the majority of their group for at least two years. Twenty-two of their group were employed and obtained income ranging from R 350 to R 1000 a month from collecting recyclable material. They could not afford to pay rent for accommodation and regarded the traffic island, which separates a busy street with various trading businesses on either side, as their home as they lived and stored their property on it. They alleged that the property comprised personal effects including food, mattresses, blankets, clothing, money, identity documents and other important documents and various materials which they used to build makeshift shelter under the bridge at night, such as cardboard boxes, wooden

[1] The section reads:
'The judges considering an application referred to in paragraph *(b)* may dispose of the application without the hearing of oral argument, but may, if they are of the opinion that the circumstances so require, order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration.'
In terms of s 17(2)*(b)* '[i]f leave to appeal in terms of paragraph *(a)* is refused [ie by the judge or judges against whose decision an appeal is to be heard], it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal . . . '.

pallets and plastic sheeting. They used the plastic sheets and cardboard boxes to construct their beds and the pallets served as temporary walls to demarcate each individual's space, house their belongings and provide them with some privacy. Each morning they would dismantle the makeshift structures, pack the material and leave it and the rest of their belongings on the traffic island as they went about in search of food and work.

[3] On the day in question, JMPD officials descended upon the traffic island in a convoy of motor vehicles, which included municipal waste removal trucks. They hurled insults at the applicants, and kicked and sprayed some of them with pepper spray in a bid to drive them away from the location. They then loaded all the applicants' belongings on the trucks and took them away. The officials had not engaged with the applicants before the operation in any manner and confiscated their belongings without the authorisation of a court order. The applicants further contended that the conduct of the respondents' officials constituted an eviction from their homes and breached their rights under ss 26(3) and 25(1) of the Constitution,[2] not to have their homes demolished without an order of court and not to be deprived of their property unlawfully, respectively, and their rights to dignity and adequate shelter.

[4] The respondents opposed the application. In an answering affidavit filed by the City on their behalf, it explained that it had an ongoing challenge of displaced people, who resided on its streets, many of them evicted from their communities as a result of criminal activity or drug addiction. To counter the problem, it established a sub-unit of the Department of Social Development. The sub-unit

[2] In terms of s 25(1) of the Constitution '[n]o one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property'. And s 26(3) of the Constitution provides that '[n]o one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.'

conducted shelter management, skills development and drug rehabilitation programmes, aimed at providing the displaced people with shelter, assist those with drug addictions and in trouble with the law, reunite them with their families and ultimately get them off the streets. The sub-unit ran biweekly outreach programmes for the displaced people in and around the traffic island to inform and educate them about the availability of municipal homeless shelters, centres with ablution facilities and social workers and opportunities to improve their standard of living. One municipal shelter was in the immediate vicinity of the traffic island but required one to have a South African identity document and pay a daily R8 fee to access it. The displaced people were, however, not interested in these services as attested to by the head of the sub-unit.

[5] The applicants' property was removed during what the City and the second respondent, the Chief of Police, Johannesburg Metropolitan Police Department, Zwelibanzi Velaphi Nyanda N O, described as 'a clean-up' operation of the area conducted pursuant to the City's by-laws.[3] The operation was prompted by numerous complaints lodged with the City by the various businesses trading around the traffic island[4] and members of the public about the occupation of pavements designated for the purpose of customer and public vehicle parking by homeless people, public defecation and urination on the pavements, excessive rubbish and waste, public abuse of illicit drugs and the disposal of used syringes, theft, robberies and related crimes in the area. The respondents denied that any eviction was committed or that any shelter was destroyed during the clean-up operation. They alleged that their officials merely removed rubbish which was found unattended or abandoned and disposed of it in a landfill. The City denied

[3] The City of Johannesburg Metropolitan Municipality Public Health By-Laws (Published under Notice No. 830 in Gauteng Provincial Gazette Extraordinary No 179 dated 21 May 2004).

[4] Mr Byron Beedle, the owner of a wholesale and distribution entity, Trans Tool Distributors (Pty) Ltd, situated directly adjacent to the traffic island, which had traded there for about 80 years, filed an affidavit confirming his complaint and the intolerable goings-on of the homeless people living on the island.

that any valuable personal items were removed and explained that its procedure during clean-up exercises which involved the removal of people's personal belongings required the preservation of any valuable items, which would be inventoried and kept for collection by the owners.

[6] It transpired that a good Samaritan, Mr Nigel Branken, had chanced upon the incident and managed to record a video of part of the operation. The video footage was admitted into evidence. It showed him remonstrating with the JMPD officials, telling them that they were removing 'people's possessions' to which one official responded that 'these people are occupying a space which is not theirs'. The footage also showed the officials indiscriminately gathering and throwing mattresses, blankets, bulging suitcases, bags and rucksacks into a truck without checking their contents. However, the officials were not shown engaging with anyone else and merely went about removing the property. Nor did it appear that there was anyone else who was interested in the property at the scene.

[7] The court a quo found that the video footage established that the JMPD officials, although not shown chasing away or threatening anyone as alleged by the applicants, were well aware that they were removing 'domestic goods which would be the typical material that homeless people would be using'. Whilst the court accepted that the JMPD officials did not inventory the property, it was highly sceptical of the claims for items such as cash, cell phones and identity documents which one would normally keep on their person and hardly leave unattended on a public thoroughfare. The court rejected the applicants' claim that their shelters were demolished as it was their own version that they were dismantled every morning and on that day too, and that the JMPD officials merely removed the loose materials they left on the traffic island. The court a quo then dismissed the vindicatory claim on the basis that the property in issue was

inadequately described and had, in any event, been destroyed and could therefore not be returned.

[8] The alternative claim was also given short shrift. Relying on a judgment of this court, *Tswelopele Non-Profit Organisation & others v City of Tshwane Metropolitan Municipality & others*,[5] the court a quo held that *mandament van spolie* did not entitle the dispossessed applicants to vindicate their lost property by its substitution. The court a quo pointed out that this decision did not deprive them of a remedy as they could pursue a damages claim even if such relief would not be viable having regard to the negligible value of their property. In the court's view, that practical consideration was not a denial of their rights as the scope of available relief was not limited to patrimonial loss.

[9] Regarding the eviction claim, the court a quo found that the traffic island was a public thoroughfare designated for the purpose of facilitating traffic and could not be equated with a 'home' or 'land' as envisaged in s 26 of the Constitution and s 1 of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The court reasoned that 'the habitual act of sleeping rough on a traffic island in a "shelter" put up and taken down each night is not an act, which properly construed, can constitute "occupation"' for the purposes of these provisions. And where there was no occupation, there could be no eviction. The court a quo concluded that the actions of the respondents' personnel did not constitute an eviction of the applicants.

[10] As to the alleged breach of the applicants' right to dignity, the court a quo found that the JMPD officials' conduct in summarily discarding their property, no

[5] *Tswelopele Non-Profit Organisation & others v City of Tshwane Metropolitan Municipality & others* 2007 (6) SA 511 (SCA) paras 20-26.

matter its condition, 'was a cynical and mean spirited act deserving of censure' and that if they acted in accordance with the respondents' policy then that policy had to be stopped. Accordingly, it made an extensive order,[6] calling upon the City to show cause why certain procedures should not be followed during the cleaning of public places to safeguard personal belongings removed in that process. The Rule Nisi was confirmed unopposed in due course. But that order had no impact on the relief sought by the applicants. They also did not challenge the court a quo's order refusing their prayer raised for the first time during argument under the rubric of their prayer for 'further and alternative relief'' – to interdict the City from threatening, harassing and dealing with them directly.

[11] On appeal before us, the applicants characterised the issues as follows: whether (a) the traffic island they occupied constituted 'land' as envisaged in the

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[6] The order read:
'2. a Rule Nisi is issued calling upon the Respondents to show cause on 26th of May 2017 why an order in the following terms should not be made:
2.1 whenever the officials employed by the Respondents, in the execution of any lawful action to enforce the by-laws remove material from a public place, such officials shall compose an inventory of every item so removed, save where it is manifest that the item is waste material.
2.2 the officials shall photograph all material removed and record the place, date, and time of removal and record it by a cross reference to the inventory.
2.3 officials deployed to perform the exercise shall be clearly identifiable as officials of the First Respondent, and a log shall be kept of the name of every official who is present at every such exercise.
2.4 when intent on removing material from a public place, officials shall make reasonable enquiries in the immediate vicinity as to the presence of possible claimants of the material sought to be removed, and if they can be located, and their identity confirmed, and they can demonstrate, convincingly, that any item is their belongings, they shall:
2.4.1 be put in possession of all items that they are able to carry away.
2.4.2 be invited to call at a designated place during office hours to collect the balance of their claimed possessions, which shall, in the inventory, be so recorded, and the items tagged.
2.5 all such items collected shall be kept in a designated place for not less than 30 days.
2.6 a notice shall be displayed at the place from which the materials were taken informing whomsoever is concerned where the material is being kept, for how long, and the procedure to retrieve any items, the name of the official responsible for the safekeeping of the material, and that person's telephone number and email address.
2.7 a report shall be furnished to Sutherland J, 90 days after this order is issued, by the Second Respondent and by the chief legal adviser of the First Respondent, supported on affidavit, listing the number of such exercises carried out, and accounting fully for the orders herein set out having been effectively implemented, and if appropriate, Sutherland J shall direct that further reports shall be furnished.
2.8 a copy of the reports shall at the same time be furnished to Lawyers for Human Rights.
3. Paragraphs 2.1 to 2.6 shall operate as an interim order, pending the return day.'

PIE Act and the temporary structures constituted their home and shelter; (b) the clean-up operation conducted by the respondents constituted an eviction from land to which the provisions of the PIE Act apply; (c) they ought to have been granted a constitutional remedy similar to that crafted in the case of *Tswelopele* ordering the return of goods and materials similar to those confiscated by the City and (d) whether they should be awarded punitive constitutional damages (which was raised for the first time in this Court).

[12] The essence of the applicants' contentions was that the traffic island was their 'place of residence or abode' and their home within the meaning of s 26(3) of the Constitution from which they had been unlawfully evicted because they had occupied it for periods between two and five years, albeit using it as overnight shelter. We were urged to interpret the PIE Act and its definition of 'land' purposively to include the traffic island. It was further contended that their plastic sheets, cardboard boxes and wooden pallets fell within the definition of 'building' or 'structure' in s 1 of the PIE Act on a purposive construction, and that their removal constituted a demolition of their homes or structures and an unlawful eviction from their homes. It was also argued that they could not be removed from the traffic island until the City provided them with alternative accommodation and that they were entitled to constitutional relief.

[13] I accept the court a quo's findings regarding the events of 1 February 2017 as sound. The invaluable and indisputable evidence presented by the video footage put paid to any possible dispute of fact. It established that the JMPD officials confiscated various domestic goods which they found stored under the bridge that were clearly not rubble. Mr Branken's running commentary throughout the recording, chastising the officials for callously removing poor people's belongings, and the response which his comments elicited from one of the

officials, that the owners of the goods had no right to occupy that space, indeed made clear that the officials knew that homeless people lived there and owned the goods they were removing. The respondents' denials in this regard and the allegations regarding inventory taking of valuable property are rendered completely untenable in the circumstances and may be rejected out of hand. The footage also showed, as observed by the court a quo, that no attempt at all was made by the officials to check the contents of the bags. The goods were simply collected and summarily thrown into the back of the truck. The footage further established that no 'structures' of any sort were demolished and no one was assaulted or ill-treated in any manner during the operation.

[14] It is against this factual background that the applicants' contentions must be considered. The respondents' critical concession regarding the unlawfulness of the removal and destruction of the property was a strong indication that the application for leave to appeal was not without merit and the applicants gave a satisfactory explanation for their delay in launching it. It is convenient to deal with the application and the merits of the case together.

[15] The applicants sought no relief in terms of the PIE Act. Strictly speaking, therefore, their persistent contentions regarding the alleged destruction of their homes without an order of court and eviction, in their founding affidavit and in argument both in the court a quo and on appeal before us, bear no relevance in the matter. However, I think it expedient to deal with the contentions, albeit very briefly, to dispel the applicants' misapprehension relating to the protections provided by the PIE Act in light of their belated claim for constitutional damages.

[16] In terms of s 1 of the PIE Act, 'unless the context indicates otherwise … ''building or structure" includes any hut, shack, tent or similar structure or any

other form of temporary or permanent dwelling or shelter'. According to the Oxford English Dictionary, a building or structure is a 'construction, edifice, erection or other object constructed from several parts or material put together … that has a roof and walls'. To 'build' envisages an act of 'putting up, setting together, assembly, creating or manufacture'. In this case, the JMPD officials found and took away a pile of loose wooden pallets, cardboard boxes and plastic sheets at the traffic island. Evidently, not even the most generous interpretation of the words 'building or structure', temporary or permanent, can lead to the conclusion that the material confiscated falls within their meaning. There were simply no buildings or structures that could be demolished and no demolition occurred.

[17] There was, similarly, no eviction. It is therefore not necessary to decide whether a public thoroughfare such as the traffic island, which is demarcated to provide parking for motor vehicles in the heart of a busy business district, is equivalent to 'vacant land' or a 'public park' and whether habitually sleeping on it may constitute 'occupation' for purposes of the PIE Act.

[18] The matter does not end there, however. Having established that the applicants' property was unlawfully destroyed, what remains is whether they may be granted any relief in these proceedings and, if so, to ascertain the extent of the harm they suffered. The applicants sought an order directing the respondents to return their property and shelter material; alternatively that they be provided with similar material and possessions. In this regard the court a quo, in my view, correctly held that the applicants could not invoke the *mandament van spolie.* A spoliation order is a preliminary and provisional possessory remedy that is granted on the assumption that the property in issue in fact exists and may be awarded in due course to the properly entitled party; it cannot be granted if the property no

longer exists as a remedy to replace it as possession cannot be restored by substitution.[7]

[19] This Court eloquently reiterated this principle as follows in *Tswelopele*:[8]

'While the *mandament* clearly enjoins breaches of the rule of law and serves as a disincentive to self-help, its object is the interim restoration of physical control and enjoyment of specified property – not its reconstructed equivalent. To insist that the *mandament* be extended to mandatory substitution of the property in dispute would be to create a different and wider remedy than that received into South African law, one that would lose its possessory focus in favour of different objectives (including a peace-keeping function) . . . . I do not think that formulating an appropriate constitutional remedy in this case requires us to seize upon a common-law analogy and force it to perform a constitutional function.'

[20] The court in *Tswelopele*, however, crafted a constitutional remedy for the reconstruction of the destroyed structures because the other possible alternative remedies, such as placing the applicants on the list for emergency housing assistance, would 'not attain the simultaneously constitutional and individual objectives that re-construction of their shelters would achieve'. For these reasons, an order mandating substitution of the unlawfully destroyed property is inappropriate in this case.

[21] What is clear however, is that the confiscation and destruction of the applicants' property was a patent, arbitrary deprivation thereof [9] and a breach of their right to privacy enshrined in s 14*(c)* of the Constitution, 'which includes the right not to have … their possessions seized'. The conduct of the respondents' personnel was not only a violation of the applicants' property rights in their belongings, but also disrespectful and demeaning. This obviously caused them

[7] *Rikhotso v Northcliff Ceramics (Pty) Ltd & others* 1997 (1) SA 526 (W) at 534 D.
[8] Paras 24 and 26.
[9] In breach of s 25(1) of the Constitution.

distress and was a breach of their right to have their inherent dignity respected and protected.[10]

[22] In the circumstances, the respondents' conduct must be declared inconsistent with the Constitution and therefore unlawful, as required by s 172(1)(*a*) thereof.[11] This finding entitles the applicants to appropriate relief for the violation of their fundamental rights as envisaged in s 38 of the Constitution.[12] As to what constitutes 'appropriate relief', the Constitutional Court the Constitutional Court said in *Fose*[13]:

'It is left to the courts to decide what would be appropriate relief in any particular case. Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a *mandamus* or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.'

And at para [69]:

'[T]his Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it… Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies,

[10] Section 10 of the Constitution.
[11] Section 172(1) *(a)* and *(b)* of the Constitution empowers a court 'deciding a constitutional matter within its power . . . must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'.
[12] Section 38 of the Constitution provides:
'Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.'
[13] *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) paras 18 and 19.

if needs be, to achieve that goal.'

[23] Although the applicants sought only the return of their property, it bears mention that a claimant in respect of a constitutional breach that has been established is not necessarily bound to the formulation of the relief originally sought or the manner in which it was presented or argued.[14] Thus, it matters not that the applicants sought to vindicate their constitutional rights for the first time in this Court.

[24] As the court a quo observed, the applicants' property was not sufficiently described to enable the respondents to replace it with similar goods, or place a reliable value on the property. In this regard the schedule attached to the founding affidavit listed the property confiscated simply as 'mattress', 'cosmetics/toiletries', 'groceries', 'clothes', 'baby clothes', 'blankets', 'cell phone', 'books', 'toys for sale', 'tools to fix trolley', 'present for mother' and 'medicine/treatment' without actually specifying those items and their worth. Apart from the vague description of the property, it is extremely difficult to place a commercial value on it. For example, six mattresses, various items of clothing and blankets (probably extensively used with no commercial value) were removed, but these items were very valuable to their owners, and all that they possessed. As stated in the founding affidavit:

'Our belongings are meagre and our homes may appear ramshackle, but this is all we have, and this is what affords us the only bit of dignity which we enjoy'.

[25] In light of these facts, I do not think that the applicants should be left to

[14] *Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae); President of the Republic of South Africa & others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae)*2004 (6) SA 40 (SCA) para 18; *Carmichele v Minister of Safety and Security & another (Centre for Applied Legal Studies intervening)* 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC); *Bannatyne v Bannatyne (Commission for Gender Equality, amicus curiae)* 2003 (2) SA 363 (CC); 2003 (2) BCLR 111 (CC); *President of the Republic of South Africa & another v Modderklip Boedery (Pty) Ltd (Agri SA & others, Amici Curiae)* 2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC) para 53.

pursue the ordinary remedy in the form of a damages claim as suggested by the court a quo. They lamented the practical difficulties posed by this route, which were acknowledged by the court itself. Instituting a damages claim would involve them in costly and time-consuming civil litigation in respect of property, which although valuable to them, is otherwise mostly of trifling commercial value. The undisputed evidence is that many of the applicants daily search for work and collect recyclable materials, which they sell in order to survive. They would be hindered in this if they were required to attend court proceedings. They have no money for transport to attend court. And for the very reason that it would not be possible for them to prove the market value of the property destroyed in the conventional way, an action for damages is not an appropriate remedy. Such an action is likely to fail or result in a nominal award of damages.

[26] During argument before us counsel for the applicants indicated that they would be willing to accept a standard, nominal amount of R 1 500 for each applicant, as compensation for the loss of their property and the wrong they have suffered. At this point I should mention that the plastic sheets, cardboard boxes and wooden pallets were not listed in the schedule as the applicants confirmed during argument that those materials, which have no monetary value, were easy to scavenge and would immediately have been replaced by them. Thus no compensation was sought for these materials.

[27] The respondents however were not willing to accede to the applicants' proposal. The amount of R 1 500 for each applicant, R 40 500, is not a large sum of money. But, in my view, it constitutes appropriate relief in the specific circumstances of this case. It will vindicate the Constitution and protect the applicants and others similarly situated against violations of their rights to dignity

and property in the manner envisaged in *Fose*.[15] This is particularly so, given the applicants' willingness to accept this amount as redress for the wrong they have suffered; the declaratory order and costs award issued below; and the order by the court a quo in relation to the removal by the City of property of homeless people from public places (which hopefully in future will have the desired effect and prevent a recurrence of conduct of the kind in question).

[28] Accordingly, the following order is made:

1 The application for leave to appeal and condonation for its late filing is granted.
2 The appeal is upheld with costs including the costs of two counsel.
3 Paragraph 1 of the order of the court a quo is set aside and replaced with the following:

' (a) it is declared that destruction of the applicants' property, listed in the applicants' schedule of reported losses annexed to the founding affidavit, by the first respondent on 1 February 2017, was unconstitutional and unlawful.

(b) The first respondent shall pay each applicant the sum of R1 500 as compensation for the destruction of his or her property on 1 February 2017, within 30 calendar days of the date of this order.

(c) The respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved.'

MM Maya

[15] See fn 11.

PRESIDENT OF THE SUPREME COURT OF APPEAL

APPEARANCES:

APPLICANTS:	A De Vos (with NS Mteto)
Instructed by:	Lawyers for Human Rights, Johannesburg
	Webbers Attorneys, Bloemfontein
RESPONDENTS:	C Georgiades SC (with R Scholtz)
Instructed by:	Molefe Knight Inc Attorneys, Johannesburg
	Molefe Knight Inc Attorneys, Bloemfontein