

IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO 10/04599

DATE:17/02/2011

EAGLE VALLEY PROPERTIES 250 CC

APPLICANT

and

UNIDENTIFIED OCCUPANTS OF ERF 952

RESPONDENTS

In re

UNIDENTIFIED OCCUPANTS OF ERF 952

APPLICANTS

and

THE CITY OF JOHANNESBURG

RESPONDENT

SUMMARY

SPILG J

Constitutional Law - Prevention of Illegal Eviction from Unlawful Occupation Act 9 of 1998 (*PIE*). The issue of providing shelter for the indigent who are subject to eviction is not contained in legislation solely focused on alleviating the consequences of past racially discriminatory laws and practices. The broader objective to be attained by the legislation is to give content to the core values of our Constitution, which include the right to dignity (section 10) and equality (section 8).

The realisation of socio-economic rights is an obligation imposed on each organ of state. In the context of housing there is only one constitutionally acceptable outcome- the realization of adequate housing on a progressive basis.

Once the issue of joinder is settled then consideration can be given to the nature of the reports that should be provided by the other spheres of government. At the least, and if there is a joinder, the reports should deal with the capacity of National, Provincial and

Local government to provide adequate housing for indigent people facing eviction from both State and privately owned land in the short, medium and long term within the City's area of control, and insofar as it affects the ability to provide temporary shelter to the First Respondents.

If however, after receipt of the reports it is still contended that the constitutional objectives are not attainable, the question would then arise whether the separation of powers would be infringed if the courts were to enquire into issues such as the efficiency of the means of delivery and the rational need for other expenditure. Courts do not interfere in policy decisions regarding the utilisation of funds as long as there is some rational basis for it. However the need to achieve the constitutional objective under section 7(2) of promoting and fulfilling the realisation of housing rights would bring into issue, on the one hand, the extent and justification of judicial intervention if the limited resources are not otherwise rationally utilised having regard to the prioritisation of socio-economic rights such as housing, and on the other hand the possibility of judicial activism already cautioned against in *Grootboom*.

Joinder- National and Provincial spheres of government- Where the City claims that it is not possible to meet housing shortages even on the progressively realisable basis as envisaged in the Constitution, *prima facie* it appears necessary for a court to obtain a complete picture of what is feasible and attainable in order to decide what is just and equitable within the context of sections 4(7) and 6(3)(c) of PIE. The content of the more detailed type of report required in such circumstances discussed.

If regard is had to the broader nature of the issues that the court may have to consider (ie; a claim that even the provision of temporary shelters for the indigent homeless population within its area is unattainable), it appears desirable that National and Provincial Government should be joined. Since neither of them has been heard on the issue, it is not appropriate to direct their joinder without affording them an opportunity to be heard on the issue.

It will also be necessary to ensure that there is a *lis* between all the original parties to the application on the one hand and each of the spheres of government that may be joined on the other.