

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 30 May 2007

Status: Immediate

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Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality [2007] SCA 70 (RSA)

In a judgment delivered today, the Supreme Court of Appeal has granted a novel order in a case where three governmental agencies unlawfully evicted a group of squatters from an open piece of land in Moreleta Park/Garsfontein, Pretoria on 31 March 2006 and destroyed their homes.

The eviction was carried out without a court order. Officials from the Tshwane Metropolitan Council, the Department of Home Affairs and the South African Police Services burnt down the shacks of about 100 squatters, who had been living on the land for about 18 months.

The SCA has ordered the three agencies to re-construct the destroyed homes on the land in question.

But because the squatters are admittedly unlawful occupiers, the Court ruled that the homes to be constructed must be temporary and capable of being dismantled, should the authorities in due course succeed in obtaining a lawful eviction order. (In those proceedings, the question of the squatters' alternative relocation will be properly considered.)

In a unanimous judgment by Cameron JA, in which Scott JA, Nugent JA, Maya JA and Snyders AJA concurred, the SCA found that the officials' wanton destruction of the occupiers' dwellings violated the Constitution. That caused far-reaching damage – not only to the squatters themselves (for to be hounded unheralded from the privacy and shelter of one's home, even in the most reduced circumstances, is a painful and humiliating indignity), but to the constitutional rights of all, since constitutional breaches of this kind threaten the security of all.

The main debate in the case was about what remedy the court should grant the squatters. The SCA held that it would be insufficient to leave the squatters to their remedy in a damages claim, or in a criminal prosecution. In addition, it was not adequate to place the squatters in line for emergency shelter and housing relief, since nationwide the need was great, and the queues very long. They were entitled to relief for their destroyed homes now, which had to be re-constructed.

What was more, the SCA held, the Constitution itself had to be vindicated – the remedy granted should instil recognition on the part of the governmental agencies that participated in the unlawful operation that the occupiers, too, are bearers of constitutional rights, and that official conduct violating those rights tramples not only on them but on all. The remedy should instil humility without humiliation, and should bear the instructional message that respect for the Constitution protects and enhances the rights of all.

All three governmental respondents were therefore ordered to construct for those individual applicants who were evicted on 31 March 2006, and who still require them, temporary habitable dwellings that afford shelter, privacy and amenities at least equivalent to those that were destroyed, and which are capable of being dismantled, at the site at which their previous shelters were demolished.

The case was brought by Mr Colin Wilfred Dredge, a Moreleta Park resident who is the treasurer of Tswelopele, a registered non-profit organisation committed to the upliftment of homeless and destitute people in the Garsfontein/Moreleta Park area.