

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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

Meadow Glen Home Owners Association v City of Tshwane Metropolitan Municipality

This case concerned disputes that have arisen between the residents' associations of residential complexes in Moreleta Park, Tshwane and the municipality over an informal settlement called Woodlane Village. Over a number of years the Municipality has consented to the high court making orders for the fencing of the settlement; control of access to and egress from it; the provision of potable water and rubbish removal services; and the development of a formal township in the area as well as the eviction of allegedly unlawful occupiers.

Throughout the residents' associations have complained that the Municipality has failed to implement these orders and they have sought and obtained orders that the Municipality has been guilty of contempt of court. The appeal concerned one such order where an official of the Municipality, Mr Fanie Fenyani, had by consent had a suspended sentence of imprisonment imposed upon him, subject to the Municipality complying with the terms of one of these orders. It was alleged that the conditions of suspension had not been complied with and therefore that

Mr Fenyani's sentence should be put into operation. The high court refused to do so and the SCA today upheld that decision.

The SCA held that it was inappropriate for the Municipality to nominate a member of staff to undergo imprisonment for the failure of the Municipality to comply with the court order. If any official was liable to imprisonment for contempt it would be the municipal manager or one of the political office bearers responsible for the failure to comply with the court order. The SCA held that although the orders had been couched in wide terms so that the precise nature of what was required in order to comply with them was not entirely clear the Municipality was under an obligation to make serious good faith endeavours to comply and if any issue arose as to what was required of it to approach the court for clarification. It did not do so and the evidence revealed that the Municipality was less than diligent in seeking to comply with these orders. This was to be deprecated. The court also considered whether orders of this type were best enforced by contempt proceedings or by more stringent supervision of the Municipality in complying with the terms of the order.