

UNIFIED RESPONSE NEEDED

Officials must be accountable for consequences of decisions

THE City of Johannesburg (“the City”) approached the High court to evict about 400 occupiers from six properties because they were living in conditions that were unfit for human habitation, and posed health and fire risks in some cases.

The dwellings comprised houses with internal partitions and shacks on the property, high rise buildings and a partially gutted double-storey without a roof that was once used as a commercial property. The application for eviction was necessitated by the City’s Inner City Regeneration Strategy, aimed at reversing inner city decay.

The cases were consolidated, in that the different court applications that affected several owners/landlords were heard together before Judge Jajbhay in 2006 in the Witwatersrand Local Division¹.

The judge, together with the parties, also conducted an inspection of the properties that confirmed the conditions to be “in fact appalling and at times disgraceful” but not as bad as the City made it out to be.

The judge refused to grant the eviction orders.

The judge viewed the right to housing as a basic human right and, as part of the socio-economic rights provided for in the constitution, the City had to find the resources to comply with the constitutional and statutory obligations to address the needs of people who were “(in) a crisis situation, or otherwise in desperate need of accommodation”.

The City was prevented from evicting the occupiers-/tenants until it devised and implemented a comprehensive housing programme that would take adequate account of their housing needs. The City appealed to the Supreme Court of Appeal (SCA), which overturned the judgment, thereby granting the evictions².

The judgment of Acting Judge President Harms was supported by the other four judges. The SCA, however, made it conditional that the City provide alternative housing to those evictees who may become homeless.

The occupiers/tenants decided to challenge the SCA’s decision by approaching the Constitutional Court (CC).

The occupiers triumphed at the CC, which overturned the decision of the SCA in February 2008³.

In a unanimous judgment by Yacoob J (nine judges agreeing with him), the CC made three major findings:

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¹ *City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2007 (1) SA 78 (W)

² *City of Johannesburg v Rand Properties (Pty) Ltd and others* [2007] 2 All SA 459 (SCA)

³ *Occupiers of 51 Olivia Road, Berea Township and Others v City of Johannesburg and Others*, 2008 (5) BCLR 475 (CC)

1. There must be a process of meaningful consultation between the City and the people it intends to evict. People are human beings.
2. The city must make alternate accommodation available if eviction leads to homelessness of occupiers of buildings that are unsafe and unhealthy.
3. The CC amended section 12(6)) of the National Building Regulations and Building Standards Act 103 of 1977.

Where criminal sanction could follow for non-compliance to vacate an unsafe building immediately, or within a period specified in a notice issued by a municipality, such action must now follow after the municipality has obtained an eviction order.

What is the impact of CC case for other related matters between a municipality and its tenants, or tenants in privately owned buildings like the Occupiers of 51 Olivia Road Berea?

Can a municipality grant an owner permission to demolish a dwelling without enquiring about occupation by tenants?

Can permission be given to convert a dwelling for non-residential use while tenants occupy it?

Municipalities presently grant such permissions, at great distress to tenants, even rendering some families homeless. They also compel landlords to evict tenants from derelict buildings and 'sweatshops'. Notwithstanding the hazardous condition of the building, in seeking a court order to evict occupiers/tenants or granting permission to owners to demolish, the municipality is responsible for displacing families or occupants when its constitutional duty is to provide accommodation.

It is the responsibility of the officials to investigate an application to demolish, the circumstances that necessitated such an application and the position of both the owner and the occupants.

It is also the duty of officials to engage with other departments, to ascertain the negative consequences, if any, in taking a decision to grant an owner or landlord permission to demolish or to have services disconnected or give consent to convert a dwelling for non-residential purpose.

Yacoob J in the Occupiers of 51 Olivia Road case made the following remarks:

“Municipal officials do not act appropriately if they take insulated decisions in respect of different duties that they are obliged to perform.

“In this case, the City had a duty to ensure safe and healthy buildings on the one hand and to take reasonable measures within its available resources to make the right of access to adequate housing more accessible as time progresses on the other.

“It cannot be that the City is entitled to make decisions on each of these two aspects separately, one department making a decision on whether someone should be evicted and some other department in the bureaucratic maze determining whether housing should be provided. The housing provision and the health and safety provision must be read together.”

The CC judgment of the Occupiers of 51 Olivia Road has serious implications for organs of State. And municipalities must adhere to the constitutional requirements of the country.

Dr Sayed Iqbal Mohamed is the chairman, *Organisation of Civic Rights*. For tenants' rights advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451