

EVICTED TENANTS ENTITLED TO SHELTER: Landmark judgment obliges local authority to respect the rights of poor evictees

By Sayed Iqbal Mohamed

BLUE Moonlight and the occupiers of Saratoga Avenue cases led to several groundbreaking judgments compelling the government to move beyond lip-service.

In a country with one of the most progressive constitutions in the world, but where the majority of the people are poor, these judgments have placed the rights of the poor centre-stage. It rightfully demands that government, which has a serious responsibility for its citizens, must intervene meaningfully, or the courts will ensure that this happens.

In June 2005 the new owners, Blue moonlight posted notices to vacate in the building in Saratoga Avenue in Johannesburg. The City of Johannesburg issued a notice in terms of its Fire Brigade Service Act in October that year.

A month later, the City listed 18 specific requirements that necessitated the owner to carry out substantial repairs and maintenance work.

The owner then issued a further notice to the occupiers and when they failed to move out, brought a high court application to have them evicted.

The occupiers opposed the eviction and asked the court to join the city as an interested party in the proceedings.

They argued that the city needed to provide alternate accommodation. The city contended that it did not owe a duty to the

occupiers to house them since they did not qualify for emergency relocation.

On October 23 2007, Acting judge Mophosho granted the order for the City to be joined and directed the main application for eviction be stayed pending the determination of this application.

Acting Judge Masipa ordered on September 12, 2008, that the City be joined in the proceedings. (Blue Moonlight Properties 39 (Pty) Ltd v The Occupiers of Saratoga Avenue 2009 (1) SA 470 (W)).

When issues were brought before Judge Spilg, he harshly criticised the city for distancing itself from the plight of the poor occupiers for maintaining that they were not its responsibility. (Blue Moonlight Properties 39 (Pty) Limited v Occupiers of Saratoga Avenue and Another (2006/11442) [2010] ZAGPJHC). In his reasons for judgment, delivered on February 4, 2010, he declared the city's housing policy to be unconstitutional as it discriminated against evictees from private property.

The city was ordered to: -

- Remedy defects in its housing policy that presently precluded tenants / occupiers of privately owned property from being provided suitable, alternate accommodation;

- Pay rentals for the occupiers for the period July 1, 2009, to March 31, 2010;
- Pay stipends to the occupiers;
- By March 31, 2010 provide at least temporary accommodation near the present property; alternatively, until suitable alternate accommodation is found, the city will have to pay each household's monthly rental of R850 by the 25th of each month, as well as a deposit, should that be required.

The courts therefore held that there was a constitutional duty on the city to provide access to housing and temporary alternate accommodation to evictees of 7 Saratoga Avenue. The city appealed and judgment was delivered last week Wednesday.

In the judgment of Judge Navsa and Judge Plasket, supported by three other judges of the Supreme Court of Appeal (SCA), an eviction order was granted, bringing finality to several cases that started with notices to vacate in 2005.

The SCA rejected judge Spilg's order regarding "constitutional damages" (compensation order) against the city to pay rental damages to the owner and stipends to the occupiers. (City of Johannesburg Metropolitan Municipality v Blue Moonlight (338/10) [2011] ZASCA 47 (30 March 2011).

The SCA set aside and substituted Spilg's judgment as follows:

1. The first respondent and all persons occupying through them (collectively "the occupiers") are evicted from the immovable property situate at Saratoga Avenue, Johannesburg and

described as Portion 1 of Erf 1308 Berea Township, Registration Division IR, Gauteng ("the property");

2. The first respondent and all persons occupying through them are ordered to vacate by no later than 1 June 2011, failing which the Sheriff of the Court is authorised to carry out the eviction order;
3. The second respondent's housing policy to the effect that it only provides temporary emergency accommodation to those evicted from unsafe buildings by the City itself or at its instance, in terms of the National Building Regulations and Building Standards Act 103 of 1977 is declared unconstitutional to the extent that it excludes the occupiers from consideration for such accommodation;
4. The second respondent shall provide those occupiers whose names appear in the document entitled "Survey of Occupiers of 7 Saratoga Avenue, Johannesburg" filed on 30 April 2008, and those occupying through them, with temporary emergency accommodation as decant in a location as near as feasibly possible to the area where the property is situated, provided that they are still resident at the property and have not voluntarily vacated it;
5. The second respondent is ordered to pay the applicant's costs and the costs of the first respondent, including the costs of two counsel.'

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