

CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 12/09

In the matter between

**AB AHLALI BASEMJONDOLO MOVEMENT SA
SIBUSISO ZIKODE**

First Applicant
Second Applicant

and

**PREMIER OF THE PROVINCE OF KWA-ZULU
NATAL**

First Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR

LOCAL GOVERNMENT, HOUSING AND TRADITIONAL

AFFAIRS, KWA-ZULU NATAL

Second Respondent

MINISTER OF HOUSING

Third Respondent

MINISTER OF LAND AFFAIRS

Fourth Respondent

FOURTH RESPONDENT'S SUBMISSIONS

INTRODUCTION

[1] On the 12th February 2008 the Applicants' launched an application challenging the constitutionality of the Kwa-Zulu Natal Elimination and Prevention of Re-Emergence of Slums Act No 6 of 2007 ("the Act") in the Durban and Coast Local Division.

- [2] The Applicants' contended that the Act is an unreasonable and retrogressive measure which exceeds the powers of provincial government, is fundamentally irreconcilable with national legislation and threatens to infringe certain fundamental rights of some of the poorest and most vulnerable members of our society.
- [3] On 27th January 2009 the Honourable Judge President Tshabalala handed down judgment dismissing the Applicants' application and making no order as to costs. The Applicants now seek relief to appeal against the said judgment.
- [4] The Fourth Respondent, namely the Minister of Land Affairs has filed a Notice to Abide the decision of the Honourable Court. However, by virtue of the directions issued by the Honourable Chief Justice on the 16th March 2009, the Fourth Respondent makes the submissions set out hereunder.

SUBMISSIONS

- [5] The Act falls within the constitutionally-sanctioned legislative competence of the province. As the Fourth Respondent understands the Act, its main purpose and objective is to improve and upgrade the living conditions in informal settlements so as to ensure that their occupiers are able to secure better living and housing conditions. Seen in this context, the Act

does not amount to a deprivation of rights but seeks rather to achieve and enforce the constitutional obligations contained in Section 26 of the Bill of Rights.

- [6] The Fourth Respondent notes and agrees with the views expressed by the Second Respondent in his Answering Affidavit filed in opposition to the said application. The international law and policy background within which our country has enacted its housing laws and policies are adequately set out by the Second Respondent as well as the Third Respondent. The Fourth Respondent agrees with these views.
- [7] Being an Act which essentially deals with housing, the need to improve living conditions and the desire to eliminate the proliferation of slum areas, the Applicants' contention that the Act will affect tenure access to land and evictions is, with respectful submission, misplaced.
- [8] The Fourth Respondent notes from the Supplementary Affidavit filed by the Second Respondent herein, that it is common cause that the numbers of South Africans living in sub-standard and often life threatening conditions in informal settlements is a matter of substantial national concern and importance. It is equally common cause that these sub-standard patterns of human habitation constitute a world wide problem of huge proportions, which despite international commitments to reversing

and stemming the tide of informal settlements, has seen little or no progress.

[9] Seen in its proper context, the Act does not infringe the constitutional or legislative guarantees as alleged by the Applicant's herein. If anything, the Act ensures that any action embarked upon by the authorities in order to give effect to the purpose and objectives of the Act, would be done so in a fair and reasonable manner. The Applicant's fears that the Act will result in unlawful evictions and a deprivation of shelter is, with respectful submission, unfounded.

[10] While Section 16 of the Act makes provisions for evictions to take place, it is clear from a plain reading of the Act as a whole, that such evictions are to be carried out in accordance with the PIE Act and with the attendant safe-guards of a judicial enquiry into the matter.

[11] The Second Respondent's affidavits make it clear that where *in-situ* upgrading of informal settlements is not possible or only partially possible, evictions with attendant relocation of residence may of necessity be required. When properly construed, Section 16 does not sanction province – wide and once-off massive evictions. The provision is designed to deal with the particular circumstances presented in particular areas of the province at any given time.

[12] Living in a constitutional state which prides itself on fairness and equality, the Fourth Respondent is confident that any actions taken in terms of Section 16 of the Act would be done so according to due process. All such evictions envisaged by Section 16 will have to be sanctioned by our Courts and alternative accommodation will have to be considered and provided to the extent of the State's legal obligations and available resources to do so. Whilst the State will ensure that the specific circumstances and needs of poor and vulnerable people are attended to in a fair and reasonable manner, what will not be tolerated will be unlawful invasions and self help.

[13] If it is found that Section 16 of the Act is unconstitutional, then it is submitted that the provision constitutes a reasonable and justifiable limitation on the rights found to be infringed as contemplated in Section 36 of the Constitution.

[14] Being an Act which is one of the first of its kind in the country, the efforts on the part of the province to improve the living conditions in informal settlements and the prevention of a proliferation and expansion of informal settlements is, with respectful submission, laudable.

[15] Seen in its proper context and against the background of the country's housing problems, it is respectfully submitted that the Act constitutes a reasonable legislative measure which is designed to give effect to binding

national laws and national and provincial policies relating to housing in general in the Republic. Once again, it s respectfully submitted, that all of these are aimed at ensuring that government's constitutional obligations as contained in Section 26 of the Bill of Rights are achieved.

[16] As the Fourth Respondent is not privy to the facts and circumstances giving rise to the application, the Fourth Respondent is not in a position to comment on same but reserves his rights with regard thereto.

[17] In all the circumstances, the Fourth Respondent humbly submits that the present application is without any merit and should be dismissed.

DATED AT PIETERMARITZBURG ON THIS DAY OF APRIL 2009.

R. SEEOBIN S.C.

4TH RESPONDENT'S COUNSEL

CHAMBERS

PIETERMARITZBURG

28 APRIL 2009