



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Mathale v Linda and Another**

**CCT 22/15**

**Date of hearing: 13 August 2015**  
**Date of judgment: 2 December 2015**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in an application for leave to appeal concerning the question of whether execution orders granted in terms of section 78 of the Magistrates' Court Act are appealable.

The first respondent, Mr Linda, instituted eviction proceedings against the applicant, Mr Mathale, who had been living on a property that was allocated to Mr Linda by the Ekurhuleni Metropolitan Municipality (Municipality), following the formalisation of the Winnie Mandela Township. Mr Mathale resided unlawfully on this property for approximately 20 years whilst Mr Linda also similarly unlawfully occupied another property in the same area.

In 1999 the Municipality decided to formalise the Winnie Mandela Township and allocated official "stand numbers" to its occupants in order to determine which part of the land they were entitled to occupy. During this process, Mr Linda was allocated the property occupied by Mr Mathale and Mr Mathale was allocated property elsewhere. However, Mr Mathale refused to vacate the property that had been officially allocated to Mr Linda, stating that he had built a home and family life around the township. Given Mr Mathale's refusal to vacate the property and the scarcity of land, the portion that he was initially assigned was subsequently offered to someone else.

The Magistrates' Court of Tembisa granted an order evicting Mr Mathale from the property. Mr Mathale appealed against the eviction order. A year later, Mr Linda successfully obtained an execution order, in terms of section 78 of the

Magistrates' Court Act, to have Mr Mathale evicted from the property; notwithstanding the pending appeal by Mr Mathale.

Mr Mathale appealed against the execution order in the High Court of South Africa, Gauteng Division, Pretoria (High Court). The High Court assumed that a section 78 order was appealable provided that it was in the interests of justice. As such, his appeal was dismissed on the basis that it would not be in the interests of justice to grant it. Leave to appeal was refused by the Supreme Court of Appeal.

In this Court, Mr Mathale argued that the High Court erred in finding the execution order that was granted in terms of section 78 was not appealable. He contended that the order should be overturned.

Mr Linda, on the other hand, argued that both the grant of the execution order and the refusal to overturn it was correct. Furthermore, he argued that this matter did not raise a constitutional issue and, even if it did, the fact that Mr Mathale had no lawful title to the property should be dispositive of the matter.

In a unanimous judgment written by Khampepe J, this Court held that the High Court had erred in its approach to section 78 orders and noted that those orders did not require a court to engage in the "interests of justice" analysis. Rather, the correct approach was to read section 78 of the Magistrates' Court Act together with section 83(b) of the same Act which allows appeals for orders that are final in effect. It was sufficient to set aside the High Court's order on this basis.

On the facts, the Court found that the execution order was final in effect in that Mr Mathale would lose his home during ongoing litigation. This would cause him irreparable harm. Thus, it found that there were sufficient grounds to set aside the decision of the Magistrates' Court.

Accordingly, leave to appeal was granted, and the orders of the High Court and Magistrates' Court were set aside.