



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Occupiers of Erven 87 & 88 Berea v De Wet, Christiaan Frederick N.O and Another**

**CCT 108/2016**

**Date of judgment: 8 June 2017**

---

### MEDIA SUMMARY

---

*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.*

On 8 June 2017, the Constitutional Court handed down judgment in an application for leave to appeal against the judgment and order of the High Court of South Africa, Gauteng Local Division, Johannesburg (High Court). The High Court refused to rescind an eviction order that had been granted against 184 men, women and children (Occupiers) who occupy a block of flats situated at erven 87 & 88, Kiribilly, corner Soper and Fife Road, Berea, Johannesburg (Property). The property was owned by ML Rocchi Investments CC (ML Rocchi) since 1985. The first and second respondents were appointed as joint liquidators of ML Rocchi (Liquidators).

Mr Calvin Maseko purchased the Property from the Liquidators and had intended to spend more than R3 million on the upgrade thereof and to lease the property as residential accommodation. On 31 January 2013, the Liquidators' attorneys served a letter on the Occupiers notifying them of the termination of their right of occupation of the Property. After the service of preliminary notices in terms of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (PIE), an order of court was obtained authorising the service of the eviction application on the Occupiers. After receiving the application, the Occupiers approached Mr Skhulu Ngubane (Mr Ngubane), a ward committee member, to assist and accompany them to court. The Occupiers contend that those present in court were only authorised to obtain a postponement of the application for the eviction.

When the application came before the High Court on 10 September 2013, Mr Ngubane and four of the Occupiers were present (Appearer Occupiers). Counsel for the Liquidators told the Court that the matter had been settled privately. A draft order was

then presented to the Court. The Appearer Occupiers and Mr Ngubane confirmed this to the Court. Accordingly, the draft order was made an order of court “by agreement”. After realising that a postponement was not secured and that the eviction had been made an order of court by agreement, the Occupiers secured legal representation and made application to rescind the eviction order. The High Court dismissed the application for rescission and held that the eviction Court had discharged its statutory obligations under PIE. As a result, the application was dismissed and leave to appeal was refused by the High Court and the Supreme Court Appeal.

In this Court, the Occupiers submitted that there was no actual agreement as a matter of fact and that even if they had consented, that consent was not legally valid. They further submitted that the Court dealing with their eviction was under constitutional and statutory duties to satisfy itself that the eviction would nevertheless be just and equitable after considering all the relevant circumstances. The Occupiers argued that the eviction order falls to be rescinded in terms of rule 42 of the Uniform Rules of Court and the common law. The Liquidators submitted that the Occupiers did not have any right to occupy the Property and had failed to disclose any defence. They also submitted that the Occupiers failed to take any steps to secure alternative accommodation and were represented in Court when the eviction order was made. Lastly, the Liquidators contended that the Occupiers had failed to establish sufficient cause for rescission of the consent order at common law. The Poor Flat Dwellers Association (Association), a non-profit civic association, was admitted as a friend of the court. Association submitted that even in cases where parties in eviction proceedings seek to have an eviction order by agreement granted, such consent does not relieve a court of its obligation to perform the judicial oversight function imposed by PIE.

In a unanimous judgment, written by Mojapelo AJ (Mogoeng CJ, Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Pretorius AJ and Zondo J concurring), the Court held that courts are not absolved from their section 26(3) of the Constitution and PIE duties where parties consent to an eviction order. The Court further held that courts must take an active role in adjudicating eviction matters, taking into account all relevant circumstances, and that the application of PIE is mandatory. Furthermore, the Court found that the eviction order falls to be rescinded for the following reasons. Although there was factual consent to the eviction order on the part of the Appearer Occupiers, their consent was not valid. Accordingly, in respect of the Appearer Occupiers, the order falls to be set aside in terms of the common law. As for the other 180 Occupiers who were not present during the eviction proceedings, the Liquidators had failed to establish a mandate between these Occupiers and the Appearer Occupiers that authorised the Appearer Occupiers to do anything that went beyond the obtaining of a postponement. Accordingly, in respect of the 180 Occupiers, the order fell to be set aside in terms of rule 42. As for remedy, the Court indicated that without the local authority being part of the proceedings, it was unable to grant a just and equitable remedy that would bring finality to the matter. Accordingly, the Court joined the local authority to the proceedings and remitted the matter to the High Court to deal with it on an expedited basis.