



CONSTITUTIONAL COURT OF SOUTH AFRICA

Pheko and Others v Ekurhuleni Metropolitan Municipality and Others (No 3)

CCT 19/11

Date of judgment: 26 July 2016

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.

Today, the Constitutional Court handed down judgment in an application for the Court to relinquish its supervisory jurisdiction in the order granted in *Pheko and Others v Ekurhuleni Metropolitan Municipality* [2011] ZACC 34 (*Pheko I*) and refer the matter to the High Court.

On 6 December 2011, this Court declared the removal of the applicants from their homes, the demolition of their homes and their relocation to be unlawful. The Court also ordered the Ekurhuleni Metropolitan Municipality (the Municipality) to identify land in the immediate vicinity of the Bapsfontein area for the relocation of the applicants; to engage meaningfully with the applicants on the identification of land; ensure that the amenities provided to the applicants were no less than the amenities and basic services provided to them at the time; and file reports regarding the steps taken to provide access to adequate housing for the applicants. To ensure that the Municipality met these obligations, the Court decided that it would supervise the process.

Further disputes arose after several expert reports were filed with the Court in accordance with the supervisory order. The applicants filed an interlocutory application asking for the matter to be referred to the High Court. The Chief Justice issued directions instructing the parties to file written submissions on the terms of referral and whether it is in the interests of justice for this Court to discharge the order of supervisory jurisdiction.

The parties agreed that the matter should be referred to the High Court to deal with the factual disputes but differed on the terms of referral. The applicants asked this Court to appoint a fact-finding commission or referee to address the factual disputes and report back to this Court. They proposed an order discharging the structural and declaratory

relief. The respondents argued that the applicants' terms of referral went beyond that which they were called to answer in the application for referral and suggested other terms of referral. In light of the difficulties that have arisen in the implementation of the *Pheko I* order, they opposed the discharge of this Court's supervisory jurisdiction. The Socio-Economic Rights Institute of South Africa (SERI), the amicus curiae (friend of the court) also opposed the discharge of this Court's supervisory jurisdiction. It submitted that there were no disputes of fact that warranted a referral to the High Court.

In a unanimous judgment by Nkabinde J (concurrent in by Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nugent AJ, Van der Westhuizen J, and Zondo J), the Court held that the declaratory component of the *Pheko I* order should not be discharged because it obliged the Municipality to comply with its constitutional obligation of providing the applicants with access to adequate housing. The Court further held that the structural component of the order, which required the Municipality to take certain steps under this Court's supervision, should be discharged. It determined that the discharge would give the High Court full authority to consider the technical evidence in the reports submitted by the parties and to hear oral evidence. On the matter of referral, the Court held that the technical nature of the disputed facts required oral evidence and that meant that the issues were incapable of being resolved on the papers. As a result, the Court held that it is in the interests of justice to refer the matter to the High Court and that the terms of the referral should be limited to the structural part of the *Pheko I* order.