

High Court clarifies the duties of municipalities to supply farm occupiers and labour tenants with services

The Kwa-Zulu Natal High Court in Pietermaritzburg recently reaffirmed the constitutional and legal obligations of local government to supply basic services to occupiers and labour tenants living on farm. In a new development, the court ordered the local municipality to formulate a plan that will see the progressive roll out of basic sanitation, potable water and refuse removal to occupiers living on farms.

Section 27 of the Constitution provides for the progressive realisation of basic water and sanitation services for everyone, subject to available resources. Although it is a legal obligation placed on the state, it is not always immediately realisable as it is tempered by the state's available resources. That being said, the courts have previously held that the failure of a municipality to allocate a portion of its budget and attention to marginalised communities amounts to a failure of the constitutional obligation. In other words, although there may not be sufficient budget to roll out basic services to all, a municipality must ensure that all people living within its jurisdiction receives attention. In this case, that specifically related to occupiers and labour tenants living on farms. A lack of funds is therefore not an excuse where the municipality prioritised service to other categories of people above the needs of farm dwellers.

The court also dealt at length with the rights and obligations of the property owner. The arrangement prevalent throughout the country is that farm owners don't receive the same level of services as townspeople do and generally have to look after themselves in exchange for paying less in property rates. However, the occupiers and labour tenants living on the land do not receive this benefit but still get the short end of the stick as far as services are concerned. The court once again reaffirmed that the duty to provide basic services rested with the municipality whilst the property owners had a negative duty not to do anything which could interfere with or deprive the occupiers of this right.

Exactly how one strikes this balance given the realities of farm dweller's remote proximity to municipal hubs is far less simple. Be that as it may, the recent case serves as confirmation that it cannot absolve the local authority from all obligation as there is a legal duty to formulate practical and cost-effective plans to service these communities.

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