

Recent judgement recalibrates the requirements for lawful evictions

On the 25th of August the Western Cape High Court handed down judgement in the case of the South African Human Rights Commission and Others v City of Cape Town and Others. This judgement further developed the legal position relating to the eviction of unlawful land occupiers. This article contains a brief summary of the judgement and its implications for landowners.

The South African Human Rights Commission brought an application on behalf of a number of unlawful occupiers that were evicted by the City of Cape Town during various stages of the lockdown. Some of the events were widely circulated on social media and elicited widespread responses. The critical legal question is whether or not a landowner (in this case the City of Cape Town) can physically stop unlawful occupiers from erecting informal dwellings before they are fully occupied without a court order or whether this should be treated as any other eviction.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) as well as section 26(3) of the Constitution stipulates that an eviction can only take place after a court order has been obtained, after taking all relevant circumstances into consideration. This is settled law, but it has always been somewhat of a 'grey area' as to whether it will still constitute an eviction if a landowner can stop the process in the act and prevent unlawful occupiers from settling whilst a shelter is still unoccupied or in the process of being erected.

The Constitution requires the courts to develop the law in a manner that supports the spirit and object of the Bill of Rights. In the specific set of facts, the manner in which the evictions took place impaired the dignity of the unlawful occupier (he was dragged out of the dwelling whilst trying to take a bath). The court therefore tried to protect the unlawful occupiers' dignity by adopting a prepositive interpretation and stated that the conduct was tantamount to an eviction which can only take place with a court order. In other words, if there is any doubt as to whether a dwelling is occupied yet or not, the landowner must err on the side of caution and obtain a court order.

It should however be noted that there were several factors present that contributed to this judgement. Firstly, it took place during the national lockdown where stricter requirements were imposed on lawful evictions. Secondly, there was substantial doubt as to whether the dwellings were indeed unoccupied. The City made use of contractors but left it to their sole discretion to decide whether it was occupied yet or not (and hence whether it was a dwelling yet). The city did not give the contractors sufficient guidance in this regard. Finally, the manner in which the evictions took place infringed on the dignity of the occupiers.

This judgement, and the court's reasoning, must therefore be understood within the context of the facts of the case at hand. Be that as it may, the resulting implication for landowners is that one should err on the side of caution. If there is any doubt as to whether an unlawful structure is occupied (and hence constitutes someone's home), a court order should be

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sought on an urgent basis. This is particularly important as it is a criminal offense to evict a person from their home without a court order.

Finally, it should be emphasized that this court case does not condone land grabs nor does it legitimize unlawful occupation of land. All it does is to emphasize that a landowner cannot take the law into its own hands even if the occupation is unlawful and even if there is doubt as to whether a shelter is occupied or not. It is merely a matter of 'two wrongs don't make a right'.