



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**JUDGMENT**

**Reportable**

Case No: 988/2024  
and 831/2024

In the matter between:

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

**FIRST APPELLANT**

**THE ILLEGAL OCCUPIERS OF THE  
REMAINING EXTENT OF PORTION 34  
OF THE FARM KAMEELZYNKRAAL 547 JR**

**SECOND APPELLANT**

and

**SUMMER SEASON TRADING 63 (PTY) LTD**

**RESPONDENT**

**Neutral Citation:** *City of Tshwane Metropolitan Municipality and Another v Summer Season Trading 63 (Pty) Ltd* (988/2024 and 831/2024) [2026] ZASCA 81 (29 May 2026).

**Coram:** HUGHES, GOOSEN and MOLEFE JJA and KUBUSHI and CLOETE AJJA

**Heard:** 12 November 2025

**Delivered:** 29 May 2026

**Summary:** Law of Property – unlawful occupation – eviction – expropriation – Expropriation Act 63 of 1975 – expropriation of property that formed the subject of the eviction order – invalidity of the expropriation process – date of eviction confirmed.

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## ORDER

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**On appeal from:** Gauteng Division of the High Court, Pretoria (Mooki AJ sitting as court of first instance):

1. Save to the extent set out below, the appeal is dismissed.
2. The order of the high court is amended by the deletion of paragraphs 7 and 8 thereof and the substitution of paragraph 9 with the following:  
‘9. The first respondent is ordered to complete the relocation of the second respondent within one year of the date of this judgment.’
3. The first appellant is ordered to pay the costs of the appeal.

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## JUDGMENT

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**Molefe JA (Hughes and Goosen JJA and Kubushi and Cloete AJJA concurring):**

[1] This is an appeal against an order of the Gauteng Division of the High Court, Pretoria (the high court), made in two interrelated matters involving the same parties. The applications were not consolidated but were heard together. The first appellant, City of Tshwane Metropolitan Municipality (the City), appeals against orders reviewing and setting aside a notice to expropriate the Remaining Extent of Portion 34 of the farm Kameellzynkraal 547 JR, district Bronkhorstspuit (the property) owned by the respondent, Summer Season Trading 63 (Pty) Ltd (Summer Season). The second appellant, the Illegal Occupiers of the property (the occupiers), appeal an order dismissing their counter-application in the review and orders made in the eviction application requiring them to be relocated within a specified time period. The appeal is with the leave of this Court.

[2] The property, which is situated on higher lying ground adjacent to the Klipkop nature conservancy, is located within what was previously the Kungwini Municipality (the municipality), which was later incorporated into the City in 2011.

[3] The matter has a long history of litigation dating back to 2003. In 2003, Mr Ben Gomeni (Mr Gomeni) owned the property, which was then vacant. He sought to invite people to settle on the property. Owners of land in the vicinity of the property, upon seeing a truck offloading building materials onto the property, instituted urgent proceedings against Mr Gomeni to stop the occupation. The high court (per Webster J) granted a *rule nisi* on 25 April 2003, which was confirmed on 3 November 2004 (per Sithole AJ). Despite being aware of the order, the municipality permitted people to settle on the property, and the number of occupiers increased dramatically. The informal settlement was styled Kanana Village by the occupiers.

[4] Summer Season purchased the property in October 2006 and attempted to negotiate with the municipality regarding the relocation of the occupiers. On 21 June 2007, the municipality wrote to Summer Season stating that it would oppose any attempt to evict any of the occupiers. On 18 December 2007, the municipality issued a notice of expropriation in respect of the property. Summer Season launched a review application in the high court to set aside the expropriation notice. The application was set down for hearing in November 2009. The municipality agreed to an order setting aside the expropriation notice, which was granted on 3 November 2009.

[5] The informal settlement continued to grow, and new shacks were erected on the property despite existing court orders. The municipality also installed water tanks and ablution facilities on the property.

### **The eviction proceedings**

[6] On 5 May 2011, Summer Season instituted eviction proceedings, under case number 25597/2011, against the occupiers. The high court, (per Muller AJ) found that the occupiers were unlawfully occupying the property and that their unlawful occupation be terminated. The court concluded that the rights of the occupiers must yield to the property rights of the owners and that it was just and equitable to evict the occupiers. On 30 April 2013, the eviction order was granted. In addition, the high court ordered the City (which had then become the municipality's successor) to take all necessary steps to provide alternative accommodation for the occupiers. It ordered the City to file a detailed report on or before 15 June 2013, on steps taken to obtain suitable land for the

purposes of the relocation of the occupiers from the property. The application was postponed *sine die* for the determination of a suitable date for relocation.

[7] The City and the occupiers sought leave to appeal the eviction and relocation orders. On 19 July 2013, the high court refused leave to appeal. Aggrieved, the City applied to this Court for leave to appeal. On 13 December 2013, this Court refused leave to appeal, and the Constitutional Court refused leave to appeal on 14 May 2014. The eviction and relocation orders were, accordingly, final and binding upon the City and the occupiers. On 12 January 2015, the City filed its report in the eviction application. The report stated that although the property is not suitable for permanent development, it is sufficient to temporarily accommodate the occupiers, and that it would expropriate the property for that reason.

### **The expropriation proceedings**

[8] On 24 March 2014, the City informed Summer Season that it intended to settle the occupiers on the property and was contemplating expropriation of the property. It relied upon s 79(24)(a)(i) of the Local Government Ordinance, 1939 (the Ordinance), read with s 5 of the Expropriation Act 63 of 1975 (the Expropriation Act). It stated that the expropriation was for a public purpose. It invited Summer Season to make representations regarding the intended expropriation.

[9] Summer Season made representations on 4 June 2014, objecting to the intended expropriation on several grounds. On 10 March 2015, the City delivered to Summer Season a notice of expropriation of the property, effective from 11 March 2015 (the 2015 expropriation notice). In response to the notice, Summer Season launched its review application under case number 22557/2015. This review application is the subject of the present appeal.

[10] On 29 October 2018, the City delivered two documents to Summer Season. The first document informed Summer Season that the City was withdrawing the 2015 expropriation notice in terms of s 23(1) of the Expropriation Act. The second was a new notice of expropriation, informing Summer Season that the property was expropriated with immediate effect (the 2018 expropriation notice).

[11] Summer Season obtained leave to amend its notice of motion in the review application in terms of rule 28 of the Uniform Rules of Court. The amendment incorporated a challenge to the unlawful withdrawal of the 2015 expropriation notice and the validity of the City's 2018 expropriation notice. It filed supplementary affidavits addressing the additional challenge.

[12] The parties agreed that the review and eviction applications be set down for a joint hearing. The latter, to determine the date of relocation to the property identified for relocation. The two applications were heard on 5 and 6 September 2023, by Mooki AJ.

### **In the high court**

[13] Summer Season's grounds of review in the high court were inter alia that:

- (a) Section 79(24)(a)(i) of the Ordinance read with s 5 of the Expropriation Act was not a lawful basis for the expropriation since those provisions do not confer the power to expropriate property. It contended that s 9(3) of the Housing Act 107 of 1997 (the Housing Act) is the only statute which would permit the City to expropriate the property for the purpose stated in the notice of expropriation. No reliance was placed on the Housing Act;
- (b) The City's Council had not resolved to expropriate the property; and
- (c) The expropriation was carried out for an ulterior motive and purpose, was arbitrary and capricious, contravened the rule of law, and was intended to avoid the court order evicting the occupiers from the property.

[14] The occupiers had launched a conditional counterclaim in the review application seeking just and equitable relief in terms of s 172(1)(b) of the Constitution. They sought to be permitted to remain on the property. In the alternative, they sought an order that the City be directed to start the expropriation process *de novo* and to comply with the constitutional and legislative requirements for expropriation.

[15] The City did not defend the 2015 expropriation notice, which it withdrew for want of compliance with the Expropriation Act. It accepted that the 2018 expropriation notice would have no legal foundation, should the withdrawal of the 2015 expropriation notice be found to be contrary to the law. It contended, however, that the withdrawal of the

2015 expropriation notice renders its review moot. It stated that it will start the expropriation process afresh should the 2018 expropriation notice be set aside. Regarding the eviction order, the City contended that the subsequent expropriations superseded the eviction order.

[16] On 31 October 2023, the high court reviewed and set aside the 2015 expropriation notice and declared the 2018 expropriation notice invalid. The court also dismissed the occupiers' counterclaim and enforced the eviction order. The City was ordered to relocate the persons in occupation of the property to portions of the Farm 370 Donkerhoek JR (Pretoria), owned by the City, and to complete the relocation on or before 30 October 2024.

### **The issues before this Court**

[17] The appeal calls for consideration of the following issues:

- (a) Whether the 2018 expropriation notice constitutes a valid and lawful exercise of the City's power to expropriate land.
- (b) If so, whether the expropriation is permitted in light of the extant order evicting the occupiers and requiring their relocation.
- (c) If not, whether a just and equitable remedy is available to the occupiers to permit them to remain on the property.

### **Legislative Framework**

[18] All expropriations occur against the background of s 25 of the Constitution<sup>1</sup> which, in relevant part, reads as follows:

'(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application-

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.'

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<sup>1</sup> The Constitution of the Republic of South Africa, 1996.

[19] In *First National Bank of SA Limited t/a Wesbank v Commissioner for the South African Revenue Services and Another*,<sup>2</sup> the Constitutional Court stated that:

“[T]he meaning of s 25 has to be determined, in each specific case, within an interpretative framework that takes into cognisance of the inevitable tensions which characterise the operation of the property clauses. This tension between individual rights and social responsibilities has to be the guiding principle in terms of which the section is analysed, interpreted and applied in every individual case”.

The purpose of s 25 has to be seen both as protecting existing private property rights as well as serving the public interest, mainly in the sphere of land reform but not limited thereto, and also as striking a proportionate balance between these two functions.’

[20] The Expropriation Act is the principal legislation which confers authority to and regulates the process of expropriation of land. In terms of s 2, the power is conferred upon the Minister of Public Works who may exercise the power on behalf of certain specified entities.<sup>3</sup> Section 5, which is presently relevant, deals with expropriation at the instance of a local authority. It states that:

‘(1) If a local authority has the power to expropriate property or to take the right to use property temporarily, such power may only be exercised, *mutatis mutandis*, in accordance with the provisions of this Act.

(2) For the purposes of the application of subsection (1) any reference in this Act to the Minister and the State shall be construed as a reference to the local authority concerned.’

(Emphasis added).

[21] If a local authority exercises the power to expropriate property, it is required to comply with the provisions of the Expropriation Act. In this regard s 7 provides:

‘(1) If the Minister has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of subsection (5), cause to be served upon the owner in question an appropriate notice in accordance with the provisions of subsection (3).

...

(3) Subject to the provisions of subsection (5), the Minister shall cause the notice of expropriation and all other notices and documents in connection therewith to be served by

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<sup>2</sup> *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Services and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* [2002] ZACC 5; 2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC); 64 SATC 471 (CC) para 50.

<sup>3</sup> Section 3(2) of the Expropriation Act.



causing the original or a true copy thereof to be delivered or tendered or sent by registered post to the person in question.’

[22] Once an expropriation has commenced by notice of expropriation, s 23 applies where the Minister has deemed it expedient to withdraw an expropriation of property. Subsection (1) provides that an expropriation shall not be withdrawn ‘(a) after the expiration of three months after the date of expropriation, except with the written consent of the owner in question’.<sup>4</sup>

[23] Section 79(24) of the Ordinance, upon which the City relied, provides that:

‘The Council may do all or any of the following things namely –

(24)(a) Subject to the succeeding paragraphs –

(i) hire, purchase, expropriate or in any other manner acquire any movable or immovable property ... for the performance or discharge of any function which the council is in terms of any law authorised or required to perform or discharge’. (Emphasis added).

[24] Section 9 of the Housing Act stipulates that:

‘(1) Every municipality must, as part of the municipality’s process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to-

(a) ensure that –

(i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;

(ii) conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction and prevented or removed;

(iii) services in respect of water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economically efficient’.

[25] Section 9(3) of the Housing Act confers upon a municipality the power to expropriate land for the purposes of housing development. It provides that:

‘(a) A municipality may by notice in the *Provincial Gazette* expropriate any land required by it for the purposes of housing development in terms of any national housing programme, if –

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<sup>4</sup> Section 23(1)(a) of the Expropriation Act.

- (i) it is unable to purchase the land on reasonable terms through negotiation with the owner thereof;
- (ii) it has obtained the permission of the MEC to expropriate such land before the notice of expropriation is published in the *Provincial Gazette*; and
- (iii) such notice of expropriation is published within six months of the date on which the permission of the MEC was granted.'

## Submissions

### *The City*

[26] The City's submissions in its heads of argument were that the high court erred in finding that:

- (a) the withdrawal of the 2015 expropriation notice did not comply with s 23(1) of the Expropriation Act;
- (b) the City was not authorised by s 79(24)(1)(a) of the Ordinance, read with s 5 of the Expropriation Act to expropriate the property; and
- (c) the City had to comply with s 9(3)(a) of the Housing Act as the only legislation that empowered the expropriation of the property for housing purposes.

[27] At the hearing of the appeal, counsel for the City conceded that neither the 2015 nor the 2018 expropriation notices could succeed and withdrew the submission that the high court erred in ruling them invalid. Counsel, however, submitted that the high court incorrectly enforced the eviction order against the occupiers, granted almost 10 years ago by Muller AJ, without sufficient evidence. It was argued that the high court did not obtain further affidavits regarding the current welfare of the occupiers; refused to accede to an invitation to conduct an inspection in loco to see how the settlement had grown; found that the eviction order precluded the City from expropriating the property; and found that the City's expropriation of the property was intended to circumvent the eviction, thereby ordering a punitive costs order against the City.

[28] Counsel submitted that the matter should be remitted to the high court, with the City providing sufficient evidence to show that the eviction would entail the massive relocation of a well-established community, which would be severely detrimental to the community. Counsel submitted a number of factors that had to be taken into account:

(a) the occupiers have formed themselves into a settled Kanana village and built homes for themselves; (b) they are working on the surrounding farms with some conducting informal businesses; and (c) there are schools for the children, a clinic for the sick and the elderly, and a church for the community.

### *The Occupiers*

[29] Counsel for the occupiers submitted that Summer Season purchased the property after the occupiers' settlement, for the sole purpose of evicting the community, and that Summer Season has no use for the land. Counsel, however, conceded that in both instances when the City attempted to expropriate the property, the process followed was procedurally flawed.

[30] It was argued that, as the matter concerns a direct challenge to the validity of the City's expropriation of the property, the occupiers are legally entitled to the just and equitable relief they seek. Firstly, Counsel contended that there was no authority for the proposition that an expropriation may not occur if there was a pre-existing unlawful use and occupation of land. In this regard, reliance was placed on *Staufen Investment (Pty) Ltd v Minister of Public Works and Others*.<sup>5</sup>

[31] Secondly, that the broad ambit of Promotion of Administrative Justice Act 3 of 2000 (PAJA) mirrors the generous remedial regime conferred on courts under s 172(1) of the Constitution. The court may craft a remedy to ameliorate the injustice suffered by the occupiers. The property is home to approximately 500 well-established households that have been living on the property for almost 20 years. Many of the occupiers are employed on the surrounding farms and in the industries in the area. It was argued that the high court should have exercised its discretion in terms of s 172(1)(b) of the Constitution and s 8 of PAJA not to give effect to the declaration of invalidity, and allowed the occupiers to remain on the property despite the eviction order against them.

[32] Counsel argued that the occupiers' constitutional rights to dignity, housing, and security of tenure outweigh Summer Season's property rights. Expropriation with

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<sup>5</sup> *Staufen Investment (Pty) Ltd v Minister of Public Works and Others* [2020] ZASCA 18; [2020] 2 All SA 738 (SCA); 2020 (4) SA 78 (SCA)(*Staufen*) para 31.

appropriate compensation is therefore the only practical, just and equitable remedy, as the loss that will be suffered by the occupiers if relocated, outweighs Summer Season's right to remain the owner of the property.

[33] Counsel was requested to make submissions against the backdrop of the City's submissions that the matter be remitted to the high court for further investigation. Counsel submitted that this Court should grant leave to the occupiers to apply to suspend the eviction order, although no application had been made.

### *Summer Season*

[34] Summer Season submitted that the high court's review judgment cannot be faulted and that there is no merit in the City's appeal. Furthermore, the relief sought by the occupiers is legally impermissible, and their counterclaim was correctly dismissed by the high court. They submitted that the high court correctly held that the City failed to comply with s 23(1)(a) of the Expropriation Act and that the withdrawal of the 2015 expropriation was invalid.

### **Discussion**

[35] In my view, the high court's finding that the City did not withdraw the 2015 expropriation notice in accordance with the law is unassailable. The withdrawal was made long after the three-month period, and Summer Season did not give the required written consent to the withdrawal as required in terms of s 23(1) of the Expropriation Act. The withdrawal was therefore a nullity, and the City could not rely on it as a lawful basis for any other decision it took.

[36] Counsel for the City correctly conceded that both the 2015 and 2018 expropriations were procedurally invalid. In doing so, the appeal was effectively conceded. The invalidity of the expropriation notices, however, is not confined to procedure. The purpose for which the expropriations occurred is a discrete issue of public importance that warrants consideration by this Court.<sup>6</sup>

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<sup>6</sup> *Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA) para 5.

[37] In both expropriation notices, the City relied on two statutory provisions, namely s 79 (24)(a)(i) of the Ordinance read with s 5 of the Expropriation Act. The 2018 expropriation notice stated that the expropriation was 'for public purpose and public interest'. The City's stated public purpose was to settle the Kanana Village on the property and to establish a permanent settlement. This, despite the City's 2015 report, which found the property unsuitable for permanent settlement.

[38] Section 5 of the Expropriation Act does not authorise the City to expropriate land. The section states that '*if a local authority has the power to expropriate property ... such power may only be exercised ... in accordance with the provisions of this Act*'. (Emphasis added). Properly interpreted, the City's power to expropriate the property for the purpose of permanently housing the occupiers on the property must therefore appear from other legislation.

[39] The right to expropriate property in terms of s 79(24)(a)(i) of the Ordinance is equally dependent upon the existence of duties or assigned functions conferred by other legislation. Expropriation may only occur if it is necessary for the discharge of a function or duty. In this instance, notwithstanding the City's assertion to the contrary, its powers and duties in relation to a housing settlement are to be found in the Housing Act. The Act specifically provides for expropriation for such purposes, albeit that it qualifies the circumstances in which such right may be exercised and renders the exercise of the power subject to the prior approval of the relevant Member of the Executive Council.

[40] I therefore agree with Summer Season's submission that the high court was correct to find that the City was required to comply with the provisions of the Housing Act. The City's defence that the Housing Act was not applicable because the purpose of the expropriation was to provide the occupiers with 'land' rather than 'housing' has no merit.

[41] The avowed purpose of the expropriation was to forestall the relocation of the occupiers in light of the extant eviction order. Such purpose is unlawful. A power to expropriate for a particular purpose may only be exercised for that purpose.<sup>7</sup> In

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<sup>7</sup> *Hardman NO v Administrator, Natal* 1975 (1) SA 340 (N).

*Kungwini Local Municipality v Puntlyf 520 Investments (Pty) Ltd*,<sup>8</sup> the municipality had sought to expropriate property to assist unlawful occupiers facing eviction. The court held that the municipality had no power to do so. In *Grobler v Msimanga*,<sup>9</sup> it was held that expropriation of land for a purpose not intended should not be enforced.

[42] Regarding the occupiers' submissions, this Court in *MEC for Public Works Eastern Cape and Another v Ikamva Architects CC*<sup>10</sup> found that an order such as the one the occupiers seek in terms of s 172(1)(b) of the Constitution is not permissible:

'In light of the sanctity of court orders and the need to uphold the rule of law, the public interest in finality, the constitutional imperative that court orders must be complied with, the lack of precedents in our law and absence of specific powers granted to courts to render a judgment nugatory in this fashion, it is my view that the discretion under s 172(1)(b) does not extend to orders sought by the Departments ... Such an order is not permissible.'<sup>11</sup>

[43] The occupiers are also not entitled to compel the City to exercise its authority to expropriate Summer Season's property. The high court had made no finding that the expropriation of a property subject to an eviction order is unlawful. In this regard, the occupiers' reliance on *Staufen* is misplaced, as it is clearly distinguishable from the case at hand. In *Staufen*<sup>12</sup> Eskom launched an application for the expropriation of the property in question after eviction proceedings were commenced, but before an eviction order was granted. The eviction order was then granted by consent and specifically provided that, if the expropriation was successful, it would fall away.

### **The relocation order**

[44] On 30 April 2013, the high court granted an eviction order against the occupiers and made extensive orders against the City to relocate the occupiers. The law demands that the City and the occupiers comply with court orders. I cannot over-emphasise the

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<sup>8</sup> *Kungwini Local Municipality v Puntlyf 520 Investments (Pty) Ltd* [2007] ZALCC 12 (14 September 2007) para 20 – 22.

<sup>9</sup> *Grobler v Msimanga* [2008] 3 All SA 549 (W); 2008 JDR 0273 (W) para 125. See also *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v L F Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C) at 268A.

<sup>10</sup> *MEC For Public Works, Eastern Cape and Another v Ikamva Architects CC* [2022] ZASCA 184; [2023] 1 All SA 579 (SCA); 2023 (2) SA 514 (SCA).

<sup>11</sup> *Ibid* para 34.

<sup>12</sup> *Staufen* para 16 and 18.

fact that the City breached its constitutional obligations by failing to abide by the court orders.

[45] The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the court to carry out its functions depends on it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows that 'disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced'.<sup>13</sup>

[46] The high court exercised its supervisory jurisdiction to enable the City to report to the court on the steps taken to obtain land for the relocation of the occupiers from the property. Notwithstanding this constitutional imperative, the City displayed a troubling disregard for the judicial eviction order.

[47] The City, as an organ of state, is duty-bound to comply with court orders. The remarks of Justice Brandeis in *Olmstead et al v United States*<sup>14</sup> remain apposite here: 'In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. [Government] is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by example. ... If the Government becomes a lawbreaker, it breeds contempt of the law; it invites every man [or woman] to become a law unto himself [or herself]; it invites anarchy.'

[48] A court order can only be set aside by means of a legally cognizable process.<sup>15</sup> This Court and the Constitutional Court, in refusing leave to appeal the eviction order, approved the high court's findings in the eviction proceedings. The relief that the

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<sup>13</sup> *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (*Pheko*) para 1.

<sup>14</sup> *Olmstead v United States* 277 US 438 (1928) at 485.

<sup>15</sup> *Provincial Government: North West and Another v Tsoga Developers CC* [2016] ZACC 9; 2016 (5) BCLR 687 (CC); 2016 JDR 0553 (CC) para 52.

occupiers be allowed to remain on the property would effectively render the eviction order nugatory.

[49] In *Grobler v Phillips*,<sup>16</sup> the Constitutional Court reaffirmed that, in assessing whether to grant an eviction order, it is necessary to balance the rights of both the owner and the occupier, for it is in this 'balancing act' that the order is rendered truly just and equitable. In that matter, the court had to determine whether it was just and equitable to grant an order for eviction of an 86-year-old occupier who had been residing on the property for 75 years, with her disabled son. The Court found that the eviction was just and equitable. In this instance, the determination that it is just and equitable that the occupiers be relocated has already been made. That determination is, by reason of the appeal process, final and binding.

[50] There is no doubt that owners of property bear the primary responsibility to take reasonable steps to protect their property. The Constitutional Court in

*Mkontwana v Nelson Mandela Metropolitan Municipality and Another*<sup>17</sup> stated:

'It is nevertheless the duty of the owner to safeguard the property, to take reasonable steps to ensure that it is not unlawfully occupied and, if it is, to take reasonable steps to ensure the eviction of the occupier. If the owner performs these duties diligently, unlawful occupiers will not, in the ordinary course, remain on the property for a long period. It is ordinarily not the municipality but the owner who has the power to take steps to resolve a problem arising out of the unlawful occupation of her property'.<sup>18</sup>

[51] Summer Seasons had not been idle, nor had it neglected to assert its ownership rights in the property. It engaged with the City in an effort to resolve the impasse amicably and humanely, but failed.

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<sup>16</sup> *Grobler v Phillips and Others* [2022] ZACC 32; 2023 (1) SA 321 (CC); 2024 (1) BCLR 115 (CC).

<sup>17</sup> *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bisset and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC, Local Government and Housing, Gauteng, and Others (Kwazulu-Natal Law Society and Msunduzi Municipality as Amici Curiae)* [2004] ZACC 9; 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC).

<sup>18</sup> *Ibid* para 59.



[52] In *Port Elizabeth Municipality v Various Occupiers*,<sup>19</sup> the Constitutional Court stated that:

‘[A] court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme’.<sup>20</sup>

[53] Homelessness in our country is a huge problem. However, land invasion should always be discouraged. While s 26 of the Constitution guarantees everyone the right to have access to adequate housing, it does not give unlawful occupiers the right to choose exactly where they want to live, and the property owners are not expected to provide such occupation indefinitely. I cannot overemphasise the need to consider the public interest in this matter as it reaches finality.

### **The high court orders**

[54] The high court ordered the City to relocate the occupiers. That order had however, already been granted by the eviction court in its judgment on 30 April 2013. The order requiring the City to produce a report setting out the steps it had taken to comply with the relocation order served to ensure that the City’s obligations were carried out under judicial supervision. When the matter came before the high court, it was only required to determine a time period within which the relocation was to occur. In this regard, it set the date for a year after the judgment was handed down.

[55] Summer Seasons did not seek an order that the occupiers be relocated to a specific property within the City’s jurisdiction. Nor was the high court required to make such a determination. It needed only to be satisfied that alternative land which was suitable for relocation had been identified and that the relocation could be carried out. In this regard, it specifically found that suitable alternative land was available to the City.

[56] I agree with Summer Season that the order should have contained no more than the date on which the relocation had to take place. The order that the occupiers be

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<sup>19</sup> *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

<sup>20</sup> *Ibid* para 28.

relocated was unnecessary since it had already been made, as was the order relating to relocation to a specifically identified property. In making these orders, the high court erred. This does not in any material respect affect the validity of the high court order, and it is an error that this Court may correct. In light of this, paragraphs 7 and 8 of the high court order ought to be deleted.

[57] There is one other respect in which the high court order must be varied. In paragraph 9 of the order, the high court set the date for completion of the relocation as 30 October 2024. That date has come and gone by reason of this appeal. Accordingly, in light of the outcome of the appeal, the order should be rendered in a form that now permits execution without confusion. It should be varied to permit a period of one year from the date of the order, so that upon this Court's order terminating the suspension of the high court order pending the appeal, it might be executed to give effect to the high court's original intention.

[58] It is trite law that an appellate court will not readily interfere with the trial court's discretion regarding costs. Costs are a matter of discretion to be exercised by the court of first instance, and if such discretion has been judicially exercised, there can be no interference by an appeal court. A punitive costs order is justified where the conduct of a party is extraordinary and worthy of the court's rebuke.<sup>21</sup> The high court imposed a punitive costs order against the City in the review application. It did so in the context of the City's conduct in the putative expropriation of the property, and its stated intention to do so to avoid relocation of the occupiers. In doing so, the high court exercised its discretion, and there is no basis upon which this Court may interfere.

[59] In the result, the following order is made:

1. Save to the extent set out below, the appeal is dismissed.
2. The order of the high court is amended by the deletion of paragraphs 7 and 8 thereof and the substitution of paragraph 9 with the following:  
'9. The first respondent is ordered to complete the relocation of the second respondent within one year of the date of this judgment.'

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<sup>21</sup> *Public Protector v South African Reserve Bank* 2019 [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC) para 226.

3. The first appellant is ordered to pay the costs of the appeal.

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D S MOLEFE  
JUDGE OF APPEAL

Appearances:

For 1<sup>st</sup> appellant:

W R Mokhare SC (with K Phuroe)

Instructed by:

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Honey Attorneys, Bloemfontein

For 2<sup>nd</sup> appellant:

A De Vos (with C du Toit and P O Mosiane)

Instructed by:

Lawyers for Human Rights, Pretoria

Webbers Attorneys, Bloemfontein

For respondent:

H S Havenga SC

Instructed by:

Peet Grobbelaar Attorneys, Pretoria

Bezuidenhouts Inc., Bloemfontein.