

**THE MINISTER OF PUBLIC WORKS AND OTHERS v KYLAMI RIDGE
ASSOCIATION AND ANOTHER.**

CCT 55/00

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Last year, floods caused widespread damage in South Africa and rendered many people homeless. Government appointed a committee to co-ordinate its response and made R557 million available for this purpose. One of the decisions taken by the committee was to establish a transit camp on the Leeuwkop prison farm to accommodate flood-victims in Alexandra Township.

The respondent, representing residents in the vicinity of Leeuwkop, challenged this decision, alleging that the camp would adversely affect their property values and environment. They contended that the committee's actions were invalid because there was no authorising legislation; that their rights under township, environment and other land legislation had been infringed; and that they had not been consulted before the decision was taken. The Witwatersrand High Court set aside the decision, directing government to reconsider it after consulting the residents and considering the environmental impact of the camp and the laws applicable.

The government appealed and in a judgment written by Justice Chaskalson on behalf of a unanimous Court the appeal was upheld. Government, as owner of the Leeuwkop land, has the same rights as other land owners; if it complies with legislation that is binding on it and acts within the framework of the Constitution it acts lawfully. The decision to establish the camp did not infringe the rights of residents under environmental, land and township legislation. Such consents as may be necessary could be obtained afterwards at the stage of implementing the decision. The committee had acted procedurally fairly taking into account various factors, including the nature of the decision, the rights affected by it, the circumstances in which it was made, and the consequences attaching to it. The Alexandra flood victims had a constitutional right to be given access to housing. Their concerns, the concerns of other homeless people looking for land on which to settle and all landowners who might be affected by choices that were made had to be considered. However, there had been a need for a decision to be taken quickly in order to address the plight of the flood victims who were living in deplorable conditions.

The Court affirmed the decision in the *Grootboom* case: within its available resources government has a constitutional duty to provide relief to the homeless and those in crisis because of natural disasters. Providing such relief is an essential role of government in a democratic state. In the present case, the funds had been made available for this purpose and government would fail in its duty to the victims of the floods in Alexandra Township if it did nothing.

The Court accordingly concluded that if regard is had to the government's constitutional obligations, to its rights as owner of land, and the power vested in it by the Constitution to implement policy decisions, the decision to use its own land at Leeuwkop as the site of the transit camp could not be said to be a decision beyond its powers.