



CONSTITUTIONAL COURT OF SOUTH AFRICA

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (Lawyers for Human Rights as Amicus Curiae)

**Case No.: CCT 37/11
[2011] ZACC 33**

**Date of Hearing: 11 August 2011
Date of Judgment: 1 December 2011**

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.

On Thursday 1 December 2011 the Constitutional Court handed down a judgment about when it will be just and equitable under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) to evict unlawful occupiers off private property. The Court considered how the constitutional prohibition against arbitrary deprivation of property, the right of access to adequate housing, and the obligation of local government to provide temporary emergency housing inter-relate.

Blue Moonlight Properties 39 (Pty) Ltd (Blue Moonlight), the owner of property in the inner city of Johannesburg, sued the Occupiers for eviction in the South Gauteng High Court (High Court) under PIE. The Occupiers, poor people who have lived on the property for many years, claimed that eviction would render them homeless. They joined the City of Johannesburg (City) in the case, maintaining that it was obliged to provide them with emergency housing. They contended that the City's housing policy was unconstitutional because it did not oblige the City to furnish them with emergency housing.

The High Court granted eviction, declared the housing policy unconstitutional, and ordered the City to provide the Occupiers with temporary accommodation. The Court also made what is called a structural interdict obliging the City to report on the steps taken by it to fix the policy and ordered the City to pay Blue Moonlight an amount equivalent to fair and reasonable monthly rental until the eviction date.

In an appeal by the City, the Supreme Court of Appeal confirmed the order of the High Court except for the compensation order in favour of Blue Moonlight and the structural interdict.

The City sought to appeal to the Constitutional Court saying that it was not obliged to provide emergency housing, its housing policy was good and that it had no resources to provide the housing in any event. The Occupiers wished to cross-appeal and argue that they should not be evicted before the City provides them with housing, otherwise they would be homeless.

In a unanimous judgment written by Van der Westhuizen J the Court held that Blue Moonlight could evict unlawful occupiers from its property if this was just and equitable. The Court took into account a number of factors in making this decision: the Occupiers had lived on the land for long, their occupation was once lawful, Blue Moonlight was aware of their presence when it purchased the property to develop it, and Blue Moonlight would not be rendered homeless if the eviction was delayed.

In considering whether alternative accommodation would be made available by the State, the Court concluded that the City is obliged to provide temporary emergency accommodation to the Occupiers. The Court rejected the City's argument that the National Housing Code does not empower or oblige the City to self-fund the provision of temporary emergency accommodation. The Court also found the City's housing policy to be inconsistent with the City's housing obligation. It was not reasonable, the Court said, for the City to provide temporary accommodation to people relocated by it from hazardous buildings and not to people who would be rendered homeless as a result of eviction by a private owner. The Court was not persuaded that the City did not have sufficient resources to provide accommodation for the Occupiers, holding that the City had wrongly budgeted on the basis that it was not obliged to provide them with emergency housing.

The Constitutional Court accordingly upheld the order of the Supreme Court of Appeal but ordered the eviction of the Occupiers 14 days after the City was ordered to provide those Occupiers who were in need with temporary accommodation. This was to ensure that they would not be rendered homeless because of the eviction.