



CONSTITUTIONAL COURT OF SOUTH AFRICA

Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)

CCT 19/11

Date of hearing: 12 August 2014

Date of judgment: 7 May 2015

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.

Today the Constitutional Court handed down a judgment concerning the appropriate remedy when an organ of state, due to the actions of its legal representative, fails to comply with an order of the Court.

The issue at hand was whether the respondent, Ekurhuleni Metropolitan Municipality (Municipality), and its attorney were in contempt of court for failing to comply with the Court's orders requiring the Municipality to submit progress reports. These reports centred on the steps that it has taken to meet its obligations to find suitable land for the applicants, who are the former residents of Bapsfontein Informal Settlement (Settlement). The Court also determined when certain public officials should be joined as parties to such proceedings.

On 6 December 2011, this Court found that the Municipality violated the applicants' rights to dignity and access to adequate housing following their forced removal from, and the demolition of, their homes in the Bapsfontein Informal Settlement. The Court further found that the Municipality had a duty to provide the applicants with suitable temporary accommodation and to engage meaningfully with them in identifying alternative land in the immediate vicinity of the Settlement. To ensure that the Municipality met these obligations, the Court decided that it would supervise the process.

In exercising this supervisory power, the Court ordered that the Municipality report to it on the progress that it had made in meeting its obligations. After the Municipality failed to comply with the Court's orders, the Court directed the Municipality and its attorney to

provide reasons why they should not be held in contempt of court. The Court also ordered the Mayor and Municipal Manager to provide reasons why they should not be joined to the proceedings and to indicate whether other responsible public officials should be joined.

In a unanimous decision by Nkabinde J, the Court determined that the Municipality and its attorney were not to be held in contempt, but it issued an order declaring that the Municipality is in breach of its constitutional obligations by failing to comply with the prior orders of the Court. The Municipality and its attorney could not be held in contempt because, as a result of the failure of the attorney to inform the Court of its change of contact information, the Municipality and its attorney had not received the Court's orders. However, the Court found that the attorney's failure to advise the Court of the change constituted gross negligence and, on that basis, ordered the attorney to pay costs from his own pocket. Finally for the purpose of implementing the Court's supervisory order, and in light of their statutory and constitutional obligations, the Court determined that the Municipality's Mayor, Manager, and Head of Department for Human Settlements as well as the Member of the Executive Council for the Gauteng Department for Human Settlements should be joined.