



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others**

**CCT 12/09  
[2009] ZACC 31**

**Date of Judgment: 14 October 2009**

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#### **MEDIA SUMMARY**

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

Abahlali baseMjondolo Movement of South Africa, an organisation representing thousands of people who live in informal settlements, and its President, Mr Sibusiso Zikode, approached the KwaZulu-Natal High Court, Durban, challenging the constitutionality of the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act. The High Court dismissed the challenge.

The applicants made two contentions before this Court. They claimed first that the whole provincial Act was invalid because the KwaZulu-Natal legislature had no provincial power to make the law because it trespassed into land tenure a legislative competence reserved for the national legislature.

They also contended that section 16 of the Act was inconsistent with the Constitution and invalid. Section 16 gives the Member of the Executive Council of the province power to publish a notice in the provincial gazette determining a period within which an owner or person in charge of land or a building that is occupied by unlawful occupiers must institute proceedings to evict the occupiers under the PIE Act. If the owner or person fails to comply, the municipality must bring proceedings to evict the occupiers.

Yacoob J, writing for a unanimous Court on the legislative competence issue, found that the Act was within the power of the province to pass laws on housing. He pointed out that the Act is not concerned with evictions alone but with the elimination of slum conditions by upgrading and relocation. He also pointed out that the Act placed detailed responsibilities on municipalities as well as the Member of the Executive Council responsible for housing in the province. A slum is a home in which people live. An Act concerned mainly with improving the circumstances in which people lived is concerned with housing. The Court therefore

rejected the first contention and held that the provincial legislature had the power to pass the provincial Act.

On the constitutional validity of section 16 of the Act, Moseneke DCJ, writing for the majority (with Langa CJ, Cameron J, Mokgoro J, Ngcobo J, Nkabinde J, O'Regan J, Sachs J, Skweyiya J and Van der Westhuizen J concurring), held that section 16 of the Act is inconsistent with the Constitution and invalid.

Moseneke DCJ found that section 16 compels an owner of a building or land or the municipality within whose jurisdiction the building or land is located to institute eviction proceedings against unlawful occupiers even in circumstances where the requirements of the PIE Act, which protects unlawful occupiers against arbitrary evictions, may not be met.

Moseneke DCJ noted that section 16 of the Act will make residents of informal settlements, who are invariably unlawful occupiers, more vulnerable to evictions should an MEC decide to issue a notice under section 16.

Moseneke DCJ also concluded that the power given to the MEC to issue a notice is overbroad and irrational because it applies to any unlawful occupier on any land or in any building even if it is not a slum and is not properly related to the purpose of the Act, which is to eliminate or to prevent the re-emergence of slums.

Accordingly, the majority judgment granted an order declaring that section 16 of the Act is inconsistent with section 26 of the Constitution and invalid.

Yacoob J dissented on this second issue. He found that the contested provision could be read subject to all the safeguards provided by the Constitution and the PIE Act. He held that, on a proper construction of the Act, an owner or municipality had to comply with the PIE Act and all other relevant legislation before an eviction could be ordered. Neither the municipality nor the owner could evict unless the evidence at their disposal satisfied these requirements. The section was therefore consistent with the Constitution.