

SOUTH AFRICA / JUDGMENT

Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others (39602/2015) [2017] ZAGPPHC 923; 2018 (6) SA 584 (GP) (15 December 2017)

[2017] ZAGPPHC 923

COURT

North Gauteng High Court, Pretoria

BEFORE

M J Teffo

CASE / FILE NUMBER

39602/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 39602/2015

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES:NO

REVISED.

In

the matter between:

THUPETJIALEXANDER
 THUBAKGALE First
 Applicant
 EKURHULENI
 CONCERNED RESIDENTS
 ASSOCIATION Second
 Applicant
 THE
 RESIDENTS OF WINNIE MANDELA
 INFORMAL
 SETTLEMENT Third
 to 134th Applicants
 And
 EKURHULENI
 METROPOLITAN MUNICIPALITY First
 Respondent
 THE
 EXECUTIVE MAYOR,
 EKURHULENI
 METROPOLITAN MUNICIPALITY Second
 Respondent
 CITY
 MANAGER, EKURHULENI
 METROPOLITAN
 MUNICIPALITY Third
 Respondent
 HEAD
 OF DEPARTMENT, HUMAN
 SETTLEMENT,
 EKURHULENI
 METROPOLITAN
 MUNICIPALITY Fourth
 Respondent
 MEC
 FOR HUMAN SETTLEMENT,
 GAUTENG
 PROVINCE Fifth
 Respondent
 MINISTER
 OF HUMAN
 SETTLEMENT Sixth
 Respondent

JUDGMENT

TEFFO. J:

INTRODUCTION

[1] This is an application to compel the first respondent to take the necessary steps within two months of the date of the order, to upgrade the housing conditions of the applicants within Winnie Mandela Settlement in terms of the Upgrading of the Informal

Settlements Programme, contained in the National Housing Code, 2009 ("the Upgrading of Informal Settlements Programme").

[2] In the alternative, the applicants seek an order directing the first respondent to provide each of them with a house at Tembisa Extension 25 on or before 31 October 2018.

[3] The applicants also seek an order directing the first respondent to register them as title holders of their respective erven by 31 October 2019 and the ancillary relief as set out in the amended notice of motion.

THE PARTIES

[4] The applicants are the 133 residents of Winnie Mandela Informal Settlement and the Ekurhuleni Concerned Residents Association

("ECRA"), a voluntary association formed by the residents to pursue matters of common interest to them.

[5] For convenience's sake in this judgment, the first, second, third to one hundred and thirty-fourth applicants are jointly referred to as the applicants. Where appropriate I refer to them separately as the first, second, third applicant, etc.

[6] The first to the fourth respondents are Ekurhuleni Metropolitan Municipality, the Executive Mayor, the City Manager and the Head of Department, Human Settlement, Ekurhuleni Metropolitan Municipality.

[7] For convenience's sake in this judgment, the first to fourth respondents are collectively referred to as the respondents. Where

appropriate I refer to them separately as the first, second, third and fourth respondents.

[8] The fifth to sixth respondents do not oppose the application.

BACKGROUND

[9] Each of the applicants has applied for a housing subsidy in different years ranging from 1998, in terms of the Integrated Residential

Development Programme ("IRDP") contained in the National Housing Code, 2009. Their applications were approved and each of their subsidies was used to develop a plot of land but they were not given access to the land.

[10] Before they launched this application, the applicants made attempts to engage the respondents about their complaints. In 2005 an organisation called Winnie Mandela Concerned Residents was formed which organisation was superseded in 2008 by ECRA, the second

applicant, in these proceedings.

[11] ECRA embarked on a series of engagements with the MEC, the fifth respondent in these proceedings, the Presidency and the first to the fourth respondents. None of these organs of state was able to explain why the applicants' housing subsidies were used to purchase land which they have not been given possession of.

[12] In correspondence and other documents that appear on record, the first respondent acknowledged that the stands in the township have been allocated to people who were not approved beneficiaries.

[13] In August 2012 ECRA laid a complaint with the Office of the Public Protector.

[14] Nothing came out of this and in June 2015, the applicants launched this application.

[15] On 6 July 2015 and in an attempt to resolve the dispute, the parties agreed to suspend litigation until August 2015. The parties entered into a memorandum of understanding in terms of which it was agreed that the fifth respondent shall submit a proposal for housing delivery to the applicants. In the process an independent auditor was appointed who compiled a report which confirmed the allegations of the applicants about the stands. It also set out the outcomes of some preliminary studies into the feasibility of on site upgrading and a brief survey of the new housing developments taking place in the residents' locality.

[16] As a result of the engagements, the applicants abandoned their claim to be upgraded where they are currently residing. They accepted the proposal to relocate them to Tembisa Extension 25 and invited the first and fifth respondents to agree to a draft order that would see them relocated to Tembisa Extension 25 by July 2017

[17] The new development is yet to be constructed.

[18] The parties could not agree on the draft order and the application was set down for hearing.

[19] The applicants amended their papers to seek the implementation of the undertakings made in the memorandum of understanding and in the discussions that followed its conclusion. The first respondent did not object to the amendment, instead it filed a further affidavit stating that the earliest housing would be provided at Tembisa Extension 25 in July 2019 and not in 2017

THE PARTIES' CONTENTIONS

The applicants

- [20] The applicants contend that the first and fifth respondents have approved their housing subsidies on plots of land that were later given to other people. The respondents have accordingly failed to advance any rational explanation why the applicants have been deprived of their right of access to housing.
- [21] The applicants also contended that when the respondents were faced with litigation to correct the misallocation of housing suffered by the applicants, the first and fifth respondents entered into an agreement with the applicants but failed to honour its terms.
- [22] It was further contended that the first respondent initially assured the applicants that the first houses to be constructed at Tembisa Extension 25 ("the new development") would be complete in July 2017.
- [23] The applicants also contend that the respondents oppose the relief they seek, while failing to dispute, and in fact relying explicitly on the terms of the agreement upon which that relief is based.
- [24] It is further contended that the respondents acted unreasonably, and unlawfully in breach of the applicants' constitutional rights of access to adequate housing, the laws and policies adopted by the state to give effect to those rights.
- [25] The applicants further contend that the respondents are obliged to provide them with the housing to which they are entitled to either in terms of their written agreement to do so, or in terms of their general duty to act reasonably to give effect to their rights of access to adequate housing.

THE RESPONDENT

- [26] It is contended that the applicants cannot say that it is the first respondent that has deprived them of their rights. The first respondent can only be held responsible from 2013 when it took over and assumed responsibility for Tembisa Extension 25.
- [27] According to the respondents the misallocation of stands does not equate to a breach of their right to access to adequate housing. It is simply a factor in ascertaining the reasonableness of the measures taken in the realisation of their right.
- [28] The respondents further contend that if the first respondent was not taking any measures to establish a township in Tembisa Extension 25 to build houses for beneficiaries, the applicants could successfully argue that their right to access to adequate housing had been breached. It may even be open to them to argue that this is what happened prior to 2013 when they were simply deprived of stands promised to them. It was contended that on the facts as they stand, the applicants cannot advance either of the two cases.

[29] The respondents deny that there has been any misallocation of the stands. According to them what the applicants contend are

corresponding stand numbers, are "dummy numbers" which are used for the allocation of a large number of beneficiaries. The respondents contend that as a result of the limited availability of land in the Municipality, the number of beneficiaries that have been approved for housing far outnumber the stands available to the Municipality. It is averred that as a result of the limited number of stands and the number of beneficiaries applying for allocation, more than one beneficiary is provided the same or similar stand number. The stand number provided to the beneficiary, does not necessarily relate to a stand which he or she will occupy.

[30] The respondents allege that due to the limited number of stands and the number of applicants, the first beneficiary to apply for housing is allocated a stand number and that stand number relates to a particular erven that the beneficiary will be allocated. The difficulty arises, according to the respondents, when all the stands have been allocated and not all the beneficiaries have been allocated a stand. It was contended that in order to ensure that the beneficiaries are provided with proof of registration, they are provided a stand description which does not correlate directly with a stand number but is closely related to a stand number. According to the respondents the stand number provided to the majority of the applicants do not necessarily relate to a particular stand. The respondents contend that 106 of the 134 applicants (approximately 79% of the applicants), were provided reference numbers which contain letters of the alphabet referred to as "dummy numbers".

[31] It is contended that the measures implemented by the first respondent to provide housing to the Winnie Mandela Community, is a clear indication that the first respondent has acted reasonably in all respects in implementing the housing policy.

[32] The respondents further contend that the first respondent undertook to provide the applicants with housing in Tembisa Extension 25 and that such housing will be provided in 2021. They deny the contention by the applicants that the timeframe provided by them is contrary to the memorandum of understanding. They criticise the applicants' contention that they should be provided with housing on or before 31 October 2018 as according to them it is not realistic, effective nor is it in line with the memorandum of understanding. The respondents contend that it is not possible for the building of houses to take place within a period of six months as there are various processes that must be finalised before the houses can be built. Township developments such as Tembisa Extension 25 take place in three stages, namely, planning, installation of services and housing construction. The respondents also raise a number of other factors for the entire completion of the processes, namely, that the establishment of a township requires various approvals, the engagement of various stakeholders, various departments within the first respondent, etc. They also contend that the determination of the time frames depends on the approval of the township application.

THE ISSUES TO BE DETERMINED

[33] Whether the respondents have breached the applicants' constitutional rights of access to adequate housing, the laws and policies adopted by the state to give effect to those rights. If so, what is the appropriate remedy?

THE LAW

[34] Section 26 of the Constitution provides:

"(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right."

[35] At para 34 of the judgment in *Government of the Republic of South Africa and Others v Grootboom and others* 2001 (1) SA 46 (CC) section 26 of the Constitution was analysed as follows:

"Subsections (1) and (2) are related and must be read together. Subsection (1) aims at delineating the scope of the right. It is a right of everyone including children. Although the subsection does not expressly say so, there is, at the very least, a negative obligation placed upon the state and all other entities and persons to desist from preventing or impairing the right of access to adequate housing."

[36] At para 36 of the *Grootboom* judgment the court went on to say the following:

"... Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups. The poor are particularly vulnerable and their needs require special attention. It is in this context that the relationship between ss 26 and 27 and the other social economic rights is most apparent. If under s 27 the state has in place programs to provide adequate social assistance to those who are otherwise unable to support themselves and their dependants, that would be relevant to the state's obligations in respect of other socio- economic rights."

[37] The measures must establish a coherent public housing program directed towards the progressive realisation of the right of access to adequate housing within the state's available means. The program must be capable of facilitating the realisation of the right. The precise contours and content of the measures to be adopted are primarily a matter for the Legislature and the Executive. They must, however, ensure that the measures they adopt are reasonable. In any challenge based on s 26 in which it is argued that the state has failed to meet the positive obligations upon it by s 26(2), the question will be whether the legislative and other measures taken by the state are reasonable. A court considering the reasonableness thereof will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once

it is shown that the measures do so, this requirement is met [para 41 of the Grootboom judgment].

[38] The state is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programs implemented by the Executive. These policies and programs must be reasonable both in their conception and their implementation. The formulation of the program must also be reasonably implemented. An otherwise reasonable program that is not implemented reasonably will not constitute compliance with the state's obligations [para 42 of the Grootboom judgment].

[39] At para 43 of the judgment (Grootboom) the court held that in determining whether a set of measures is reasonable, it will be necessary to consider housing problems in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the program. The program must be balanced and flexible and make appropriate provision for attention to housing crisis and to short, medium and long term needs. A program that excludes a significant segment of society cannot be said to be reasonable. Conditions do not remain static and therefore the program will require continuous review.

[40] The following was said at para 44 of the Grootboom judgment:

"Reasonableness must also be understood in the context of the Bill of Rights as a whole. The right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test." (my emphasis)

[41] Section 3 of the Housing Act 107 of 1997 ("the Act") provides:

"(4) For the purposes of performing the duties imposed by subsections (1) and (2) the Minister may –

(g) institute and finance national housing programmes; ..."

[42] Section 4 of the Act reads:

"National Housing Code

The Code shall be binding on the provincial and local spheres of Government."

[43] Part 3 of the National Housing Code, 2009 for Incremental Interventions: Integrated Development Programme ("the Code") under the National Housing Subsidy Data Base ("NHSDB") reads:

"Upon approval by the MEG of the application and the developer having been advised accordingly, the developer must proceed to:

- (a) Transfer the property to the beneficiary; and
- (b) Complete the housing product in accordance with the subsidy agreement on the relevant property."

ANALYSIS

Failure to allocate houses to the applicants

[44] It is common cause between the parties that each of the applicants has applied for a housing subsidy. The subsidy applications have been approved. The housing subsidies identify a particular plot of land which that subsidy was used to purchase and develop. The applicants' complaints are that they are not in possession of the stands purchased and developed with their housing subsidies. The stands were developed to benefit them and no other people. They are being billed for municipal services on land acquired with their subsidies and allocated to them in terms of the National Housing Code, 2009 (the Housing Code) but they have never been given possession thereof.

[45] At para 38.2 to 38.4 of the respondents' supplementary answering affidavit the above allegations are not contested, although mention is made of only 23 of the applicants who were approved as beneficiaries on service stands but do not reside on the stands. It is conceded that these beneficiaries are receiving municipal bills for rates and taxes services utilised by other beneficiaries residing on their stands. It is further alleged that 11 beneficiaries are sharing a stand with two or three families on one service stand. It is not denied according to the report that was sent to the applicants' attorneys, Socio-Economic Rights Institute ("SERI"), in July 2015 that about 119 of the applicants are beneficiaries to stands that were not allocated to them. Strange enough the respondents deny that fraud or negligence could have been committed in the allocation of stands to other people instead of the applicants. The allocation thereof is not clearly explained.

[46] At para 39 of the respondents' supplementary answering affidavit the following averments are made:

"None of the Applicants have been required to pay any of these bills. They are not suffering any prejudice. Obviously these bills have to be linked with the occupants of the serviced stands. It does not mean that there was a misallocation of stands, either by fraud or negligence. Moreover, these Applicants will be allocated elsewhere. They were allocated numbered stands as explained above."

[47] On page 855 Vol 8-9 of the bundle of documents, there is a letter annexed to a letter dated 8 January 2014 from the first respondent

("WM 148") to SERI which reads:

"List of people to be allocated to Winnie Mandela. Esselen Park and Old Mutual

Please be informed that the list submitted was investigated and the matter can be reported as follows: ..."

The last para reads:

"There are instances where persons have received notification of being allocated a stand and/or house but have not received possession: These include:

- i) Where a house and/or stand is illegally occupied;
- ii) Where there is an administrative error;
- iii) Where there is a corruption, fraud and/or bribery which have resulted in the stand being illegally occupied;
- iv) The stand or house has not been signed off for occupation."

In all the cases mentioned above, relevant steps are taken to redress and/or correct the situation including correcting administrative errors and requesting investigation and prosecution of guilty parties to corruption, fraud and/or bribery.

In the case of stands and/or houses still to be completed or signed-off, relevant steps and action is taken to have the necessary work completed and/or signed off."

[48] This letter is a clear indication that the first respondent realised that there were problems in the allocation of the stands to the applicants who are the approved beneficiaries but could not occupy them.

[49] The averments made in the respondents' supplementary answering affidavit signed in March 2016 are based on a report that is dated July 2015 a year and six months after the above letter dated 08 January 2014 was written. The allegations of fraud which were also based on an investigation are now denied but there is no reasonable explanation for the misallocation. The contention at para 39 of the respondents' supplementary answering affidavit that the applicants are not suffering any prejudice because they are not required to pay the bills is without merit and loses sight of the fact that the issue here is not about the payment of the bills for stands allocated. The issue is about the approval of the housing

subsidies of the applicants and failing to provide the necessary stands to them which stands, should have been allocated as per the approved housing subsidies in terms of the National Housing Code.

[50] The worst situation is that of the sixteenth applicant, Mr Moshupya. He is the registered owner of the stand. His housing subsidy was used to pay for the stand. He does not live at the stand but continues to receive a bill for rates and taxes in respect of the said stand.

[51] At paragraphs 41 and 42 of the respondents' supplementary answering affidavit the following allegations are made:

"41. Ad paragraph B

It may be that these applicants have been marked as 'inactive' on the housing subsidy database. This does not mean that they will not be allocated stands. The Respondents have already undertaken to build houses in Tembisa Extension 25 as set out in the answering affidavit.

42. Ad paragraph 9

The applicants are not in bureaucratic limbo. It may be that they were required to wait for some time to acquire a house and a serviced stand. This does not mean that they will never get a house. By 2021 all the Applicants will be housed in Tembisa Extension 25."

[52] The steps taken to build houses for them in Tembisa Extension 25 are preliminary steps towards correcting the mistake in the misallocation of the stands. The issue is why is it taking this long. Why should they have to wait for the other 1488 people who are not in the same situation.

BREACH OF THE HOUSING ACT AND POLICIES

[53] There can be no doubt that the manner in which the housing allocations were done was not in accordance with the Housing Code.

[54] Section 7(3) of the Housing Act requires the MEC to administer every national housing programme contained in the Code, and to administer any provincial housing programme in a manner which is consistent with the Code. In doing so, the MEC must approve and provide finance, including housing subsidies, for individual housing projects. (Section 7(3)(1)(i) and (ii) of the Housing Act.)>

[55] The Housing Code requires the developer who is the Municipality to transfer the property to the beneficiary upon approval by the MEC of the application and it being advised thereof.

[56] From the common cause facts between the parties it is clear that the allocation of stands at Winnie Mandela to the people unknown to the applicants whose subsidies were not used to develop the place, was not in accordance with what the first respondent was required to do in terms of the National Housing Code and the Act.

[57] The explanation given by the respondents, whether it is the allocation of dummy numbers, misallocation or whatever, as a result

of fraud, negligence, or whatever is not justifiable.

[58] The first respondent has therefore breached the laws and policies it has adopted to realise the right of the applicants to adequate housing.

THE DUTY TO ACT REASONABLY IN TERMS OF SECTION 26(2) OF THE CONSTITUTION

[59] Without repeating the history of this matter, it is an undisputed fact that the applicants decided to launch this application after they realised that they were not getting assistance from the respondents. Proceedings had to be put in abeyance in order to allow negotiations to take place, hence the memorandum of understanding and the draft order which could not be agreed upon.

[60] The inquiry into the reasonableness of measures intended to give effect to the right to housing, and other socio-economic rights, is now well- established. The measures must be related to the purpose of realising the right. They must be intended to and capable of doing so. They must prioritise those in the most desperate need. They must be flexible [Grootboom paras 41, 43, 44]. They must not contain unreasonable limitations or exclusions [Mazibuko v City of Johannesburg 2010 (4) SA 1 (CC) at para 67]. They must also be subject to continuous review and implemented through a process of meaningful engagement with those affected by them [Ngomane and Others v Govan Mbeki Municipality (CCT 17[16] [2016] ZACC 31 (8 September 2016). The measures must also be consistent with the laws and policies adopted by the state to give effect to the right of access to adequate housing [Melani and Others v CJ1y of Johannesburg and Others 2016 (5) SA 67 GJ, para 32].

[61] In conducting the enquiry into the reasonableness of the measures intended to give effect to the right to housing and other

socio-economic rights, sight should not be lost that at stake here is the rights to adequate housing of the 133 applicants before court and not the 1488 people who the respondents promise to provide housing to them by 2021.

[62] Mr Wilson correctly argued on behalf of the applicants that the papers of the respondents are silent as to when it should be possible to provide housing to the 133 applicants at Tembisa Extension 25 or anywhere else. The respondents have not said in their papers that they cannot find houses for the 133 applicants before 2021. The emphasis on the respondents' contentions is the provision of housing at Tembisa Extension 25 to the 1488 people who are not part of the 133 applicants.

[63] The applicants were not allocated stands that they were entitled to by virtue of the approval of their housing subsidies. They are the lawful beneficiaries of the stands in terms of the letters they received from the first respondent. They did not get the stands due to no fault on their part. The actions of the first respondent in failing to let them occupy the stands they

were entitled to are in breach of the National Housing Code which stipulates that once the MEC had approved their housing subsidy applications, they are entitled to transfer of the properties in their names.

[64] Mr Georgiades for the respondents relied on the Soobramoney judgment 1998 (1) SA 765 (CC) and argued that the Constitutional Court in that matter stated that the right to housing, healthcare,

food, water and social security are dependent upon resources available for such purposes and the corresponding rights themselves

are limited by the lack of resources. He also relied on para 95 of the Grootboom judgment where the court held that s 26 does not expect more of the state than is achievable within its available resources and does not confer an entitlement to "claim shelter housing immediately upon demand". Further that as far as the right to housing, healthcare, food, water and social security go "the state is not obliged to go beyond available resources or to realise these rights immediately".

[65] In my view the facts in the cases referred to by the respondents including the TAC (No 2) case 2002 (5) SA 721 (CC) are distinguishable. In the present matter the first respondent has breached the laws and policies adopted by it to give effect to their right to adequate housing. It failed to give the applicants possession of the stands to which they were entitled to by virtue of them being the approved beneficiaries in terms of the National Code.

[66] The negotiations between the first respondent and the applicants culminated into an agreement in 2015. The fact that the parties could not agree on the realistic timeframes is due to the fact that the first respondent is concentrating on the realisation of the rights of the 1488 people while it did not address the need to correct the breach of the right to adequate housing of the 133 beneficiaries who could not occupy the stands due to no fault on their part but by failure of first respondent to conduct the allocation of the stands in terms of the National Housing Code and the Housing Act.

[68] In taking measures intended to give effect to the applicants' rights to adequate housing, the first respondent knowing fully well what was done to the applicants, did not prioritise the correction of the breach. The applicants are in the most desperate need, given the lengthy period of time their right to adequate housing has been breached.

[69] It is no excuse to say the first respondent should only be accountable for the period after 2013. It is an organ of state. It inherited the complaints of the applicants, the matter was investigated, it knows exactly what happened. It should have taken

reasonable measures to correct the breach and provide the applicants with access to adequate housing within a reasonable time.

- [70] Most of the applicants' applications for housing subsidies were made prior to 2000. Once approved a legitimate expectation was created on the applicants that they were going to be allocated stands or houses on the land that was developed with their subsidies. For over ten to fifteen years they have been residing in the Informal Settlements, which places, have not been developed.
- [71] It is the respondents' contention that they have acted reasonably in the progressive realisation of the applicants' right to adequate housing in terms of s 26(2) as they have undertaken to provide them with houses in 2021. In my view the respondents have taken too long to address the complaints of the applicants. Their actions prompted the applicants to come to court. They did not prioritise the realisation of the rights of the applicants who are in the most desperate need.
- [72] In delaying to provide the applicants with access to adequate housing, the first respondent has failed to act reasonably in the implementation of the national housing policy as required of it in terms of s 26(2) of the Constitution.
- [73] All the excuses by the first respondent about the budgetary constraints, the various processes that has to be finalised according to it before the houses can be built, etc, are delaying tactics to continue to deprive the applicants access to adequate housing. They are rejected [see *Mchunu and Others v Executive Mayor, Ethekwini Municipality and Others* 2013 (1) SA 555 (KZD)].

THE APPROPRIATE RELIEF

- [74] It is clear on the papers that the respondents have not indicated with certainty when the houses or stands can be allocated to the applicants. The applicants have waited long enough for the first respondent to correct and deal with its breach of its obligations in terms of the National Housing Code. It has started the process but the delay in providing the applicants with access to adequate housing cannot recur forever. The applicants should be provided with access to adequate housing within a reasonable and realistic timeframe.
- [75] Under the circumstances it is my view that a year from the date of this order is realistic and reasonable.
- [76] Consequently the following order is made:
1. The first respondent is ordered to:
 - 1.1 provide each of the first and the third to one hundred and thirty-fourth applicants ("the residents") with a house at Tembisa Extension 25, or at another agreed location, on or before 31 December 2018;
 - 1.2 register the residents as the titleholders of their respective erven by 31 December 2019;

1.3 deliver written reports to the residents, through their attorneys, and to the registrar and the court, not more than three months, from the date of this order, and at three months intervals thereafter, setting out the timeline for completion of, and the progress which has been made in providing, the houses referred to in paragraph 1.1 above.

2. The second, third and fourth respondents are ordered to take all the necessary administrative and other steps necessary to ensure that the first respondent complies with the order in paragraph 1 above.

3. The respondents will establish a Steering Committee which will meet quarterly to oversee the process of construction. The Steering Committee will include –

3.1 three representatives from the residents, to be chosen from the residents, to be chosen by the residents themselves;

3.2 a representative from the second applicant;

3.3 representatives from the first, fifth and sixth respondents, one of whom shall have direct responsibility for the construction of the houses to be provided to the residents.

4. In the event that the respondents fail to comply with their obligations in terms of paragraphs 1 to 3 above, the applicants may supplement their papers and enrol this application on 10 days' notice for further appropriate relief.

5. The first respondent is directed to pay the applicants' costs including the costs of two counsels.

M J TEFFO

JUDGE OF THE HIGH COURT

Appearances

Counsel for the applicants S D J Wilson

Instructed by

SERI Law Clinic

Counsel for the respondents C Georgiades

Instructed by

Tshiqi Zebediela Inc

c/o Noko Ramaboya Mason Attorneys

Date of hearing

25 May 2017

Date of judgment

15 December 2017

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Prepared on 11 October 2026 · Esheria