



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The City of Cape Town v The South African Human Rights Commission and Others (Case no 1337/2022; 368/2023) [2024] ZASCA 110 (10 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal, with costs, against an order of the Western Cape Division of the High Court, Cape Town (the high court).

The core issues before the SCA were firstly, whether The City of Cape Town, as a local sphere of government (the appellant), could counter-spoilate when homeless people invade its unoccupied land and secondly, under which circumstances it could justifiably do so without resorting to one of the alternative remedies under South African law.

Between the period April to July 2020, during the height of the Covid pandemic, the appellant removed homeless people from several pieces of its unoccupied land. The Anti-Land Invasion Unit (ALIU) acting on behalf and on the instructions of the appellant demolished their homes, structures and/or dwellings consisting of corrugated iron sheets commonly known as shacks and others made of plastic sheets, cardboard boxes and wooden pallets. It also destroyed their belongings found inside those structures while some people were injured in the process. While others were treated in the most undignified and humiliating manner. As a result of the appellant's conduct, the South African Human Rights Commission (the First Respondent) amongst others approached the high court for urgent interlocutory relief.

The matter was disposed of in two parts (Part A and Part B). In Part A, the high court interdicted and restrained the appellant's and any of its authorised agents from evicting persons from and demolishing and informal dwelling, hut, shack, tent or similar structure while the state of disaster remained in place pending the finalisation of Part B. In Part B, the high court declared the various demolitions of structures and effective eviction of persons affected thereby during the period April to July 2020, unlawful and unconstitutional. The high court further declared the appellant's incorrect interpretation and application of the common law defence of counter-spoilation unlawful and unconstitutional. The appeal was with leave of the court *a quo*.

The SCA held that a municipality as a local sphere of government could counter-spoilate when homeless people invade its unoccupied land under all circumstances and would be justified in doing so without resorting to alternative remedies such as the *mandament van spolie*, an ordinary interdict or interdict under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). The SCA held further that counter-spoilation is not unconstitutional and remains a part of South African law until declared otherwise.

The SCA found further that a municipality was however required to exercise its right to counter-spoilate immediately (*instanter*), within the narrow window period in which counter-spoliation is available. Once the window had closed and recovery was no longer *instanter* when the despoiler has perfected possession of the land. Thereafter the municipality is required not to breach the despoiler's rights to dignity, privacy and not to be evicted from their home or have their home demolished without an order of court enshrined in ss 10, 14(c) and 26(3) of the Constitution.

Accordingly, the appeal was dismissed.

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