

SOUTH GAUTENG HIGH COURT, JOHANNESBURG
JUDGMENT

(1) REPORTABLE: **NO**/
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED.

Date: 30 August 2013.

A handwritten signature in black ink, likely of the judge, is written over a dotted line.

SIGNATURE

CASE NO: 02312/2013

In the matter between

MTSHALI THOKOZANI

1st Appellant

THE OCCUPIERS OF 238

MAINS AND BEREA STREET

2-230 Applicants

and

TAYENGWA MASAWI

1ST Respondent

TRENE RUMBINZAI MASWAI

2ND Respondent

PHUMANGELAKHE MAKHAYA

3RD Respondent

CITY OF JOHANNESBURG METROPOLITAN

MUNICIPALITY

4th Respondent

NATIONAL COMMISSONER OF

SOUTH AFRICAN POLICE

5th Respondent

Date of judgment: 30 August 2013

JUDGMENT: LEAVE TO APPEAL

MOLAHLEHI AJ

- [1] This is an application for leave to appeal against the judgment made by this Court on 28 March 2013 in terms of which the applicants' rescission application of the eviction order made by Kathree-Setiloane J, under case number 47208/11 on 28 March 2012 was dismissed.
- [2] The alternative relief sought by the applicants was that the City of Johannesburg should provide alternative accommodation to the 30 applicants, who after their eviction were rendered homeless resulting in them taking sanctuary under a bridge. The applicant complained under this heading that Johannesburg Metropolitan City Council had arranged alternative accommodation which required them irrespective of whether they were employed or not to pay R20,00 per person. The applicants also complained that even those who had income the amount of R20,00 was unaffordable because they were unemployed and did not have constant income. It was for this reason that the Court ordered that the amount should be reduced to R10,00 and payment be limited to those who had some sources of income.
- [3] The question to answer in considering whether to grant or refuse leave to appeal is whether there exist reasonable prospects that another Court may arrive at a decision different to that of this Court.
- [4] On the first day of the hearing of this matter the issue of the role and responsibility of the City Council was debate at some length. The City Council

did not dispute its responsibility but indicated the difficulty they were faced concerns the numbers of people that require accommodation. The cordial engagement and corporation between the City Council and the applicants' representatives was apparent. The issue of the R20,00 which the applicants had to pay was also discussed at length. After a lengthy debate the matter stood down for the parties to engage further in discussions about the issues relating to the alternative relief.

[5] It was apparent from the report received the following day as to how far the parties were in relation to the alternative relief. The impression I had was that the parties had reached a consensus on the approach to be adopted. And it was on that basis that the order as to the alternative relief was formulated. It was for instance apparent that requiring every person including children and those who did not have income to pay was unfair and that at least the payment should be limited to those who have income. The issue of affordability was also raised even for those who have income. It was contended that the amount was unaffordable because most of applicants were not in full time employment and that whatever the source of income they had it was not stable and consistent. It was in this context that the order was made and in particular the reduction of the amount to R10, 00 for those who has income. In this respect an annexure was submitted showing those who received income including the amount of the income and those who did not.

[6] In my view the alternative order was in essence an order based on consensus of the parties. The issue which the Court had to determine concerned the rescission application. It is trite that the Court in considering an application for rescission it has a judicial discretion to exercise which it does by taking into

account all the relevant factors which are well established in our law.


[7] In the present instance the Court arrived at the decision to dismiss the rescission application after taking into account all the relevant factors. I am not persuaded that there are reasonable prospects that another Court is likely to arrive at a different conclusion to the one reached by this Court. Even if I was wrong in arriving at the conclusion as I did in relation to the rescission application, I am of the view that the matter has now become academic and any decision to be made would not take the matter any further. In this regard I do not agree with the submission made on behalf of the applicants that the decision made need to be reversed because it would serve as a precedent. The decision not to grant the rescission was based on the facts and the circumstances of this case and would not subsequently be binding on any other Court.

[8] It is for the above reason that, I do not believe that there are reasonable prospects that another Court is likely to arrive at a decision different to the one reached by this Court in both the rescission application and the alternative relief including the issue of costs.

[9] In the present instance, I do not believe it would be appropriate to allow costs to follow the results.

Order

[10] In the premises, leave to appeal is refused, there is no order as to costs.



E MOLAHLEHI
ACTING JUDGE OF THE
SOUTH GAUTENG HIGH
COURT, JOHANNESBURG

Appearances:

For the Applicant:

For the Respondent: