

14570/12-AP  
2012-03-27

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JUDGMENT

iAfrica Transcriptions (Pty) Limited/AP  
IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

2012-03-27

CASE NO: 14570/12	
FILED TO NOT APPLICABLE	
FILED YES/NO	YES/NO
FILED TO OTHER JUDGES	YES/NO
DATE 8/5/2012	
SIGNATURE	

In the matter between

10	J HAMUSIRA	Applicant
	and	
	MINISTER OF DEFENCE	Respondent

J U D G M E N T

20 A.A. LOUW J: The applicant is a rifleman in the employ of the South African National Defence Force, stationed at 8 South African Infantry, Batallion Upington.

The applicant with his wife and three children, until some date last year stayed in housing allocated to him and his family by the respondent at Buffel Street, Louisville. That house burnt down and this court was then approached last year and made an order on 10 May 2011, which granted the applicant's application at that stage. The order by Claassen J dated 10 May 2011 is ANNEXURE JH1 to the papers on page 20 of the application before me. That order was granted, pending the repair of the

residence at 12 Buffel Street Louisville.

Pending that event, the respondent was ordered to make available another house in Eland Street or was ordered to pay R2 000 per month or make available other suitable accommodation for the applicant and his family. The respondent chose the first option and a house at 26 Eland Street was allocated to the applicant. That house in February this year also burnt down and in February the applicant then approached the applicant for suitable housing again. It is so that in the first correspondence which was within a week or so after the house had burnt  
10 down, reliance was not placed on the right flowing from the order of 10 May 2011, but that is undoubtedly the basis on which the applicant is before court now. The applicant's argument quite simply is not that he has an independent right to housing, that he can claim from the respondent, instead he relies on the 10 May 2011 order, which the argument is, is still valid. The respondent opposes this argument saying that the order has been executed, has served its purpose and is obsolete.

I do not agree. The order on my reading of it intended to provide for remedies as set out in 1.1 of that order, pending the repair of the Buffel Street house. That has not happened, that is common cause. The fact  
20 that the respondent chose an option which it no longer can provide, does not have the consequence that that is a final choice which now has eliminated all the other options. The duty is still in terms of that court order to provide one of the options, at least until the restoration of occupation to the Buffel Street house.

The present prayer 3 is the same as the court order of last year,

except that it has now of course eliminated the possibility of the Eland Street house. On my interpretation of the order therefore, the applicant is entitled to prayer 3. Regarding contempt of court, I do not find any merits in that the court order was at least capable of two interpretations. The respondent has chosen the interpretation which I reject. The respondent no doubt received legal advice. I cannot in the circumstances find any form of civil or criminal contempt. I do not regard it necessary to postpone such prayers as requested by the applicant for any reason. I accept that the order that I make will be complied with by the respondent.

10 In the circumstances I make the following order:

1. The order in terms of prayer 3 of the notice of the notice of motion;
2. The respondent is ordered to pay the costs of the application.

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ON BEHALF OF THE APPLICANT: APPEARANCE NOT NOTED

ON BEHALF OF THE RESPONDENT: APPEARANCE NOT NOTED

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