

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

*IN THE HIGH COURT OF*  
**GAUTENG LOCAL DIVISION,**



*SOUTH AFRICA*  
**JOHANNESBURG**

**CASE NO: 2019/18156**

1. Reportable: No
2. Of interest to other judges: Yes
3. Revised: Yes

Wright J  
4 October 2022

In the matter between:

**RYCLOFF-BELEGGINGS (PTY) LTD**

**APPLICANT**

**and**

**NTOMBEKHAYA BONKOLO and 70 others**

**1<sup>st</sup> to 71<sup>st</sup> RESPONDENTS**

**CITY OF JOHANNESBURG METROPOLITAN**

**72<sup>ND</sup> RESPONDENT**

**MUNICIPALITY**

**EXECUTIVE MAYOR, CITY OF JOHANNESBURG**

**73<sup>RD</sup> RESPONDENT**

**CITY MANAGER, CITY OF JOHANNESBURG**

**74<sup>TH</sup> RESPONDENT**

**DIRECTOR OF HOUSING, CITY OF JOHANNESBURG**

**75<sup>TH</sup> RESPONDENT**

**JOHANNESBURG PROPERTY COMPANY**

**76<sup>TH</sup> RESPONDENT**

**INTERNATIONAL COMMISSION OF JURISTS**

**AMICA CURIAE**

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**JUDGMENT – WRIGHT J**

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**WRIGHT J**

1. Ms Portia Mofokeng is a person with dignity. Ms Mofokeng has a partner, Mr Likotse Masolisa and the couple has a daughter, T who is now four years old. Ms Mofokeng and Mr Masolisa make a living by collecting, sorting and selling recyclable materials. Ms Mofokeng and Mr Masolisa, together with T live in a shack on [...] farm, which is close to where they collect waste during the day and put it onto flat-bed trollies. At night they sort the reclaimed waste where they reside.
2. About seventy other persons live on the farm. These persons, with the same dignity and fortitude of Ms Mofokeng make a living in the same way and also reside in shacks. I shall refer to all the persons sought to be evicted, collectively as Ms Mofokeng.
3. The applicant company, Rycloff, owns the farm and wants to use the land commercially. It wants to evict Ms Mofokeng on the basis that the occupation of Ms Mofokeng is illegal and has been for well over six months.
4. The papers in this case are long and complicated. There are many side issues. The application was launched as long ago as May 2019. The court file is filled with many affidavits, supplementary affidavits, reports, additional reports,

minutes of meetings and papers indicating that much time and effort has been spent engaging and attempting to find agreement.

5. Court cases necessarily include a time lag between the closing of the papers and argument at a hearing and then the handing down of judgment. The interests of justice require that a decision in this matter be made sooner rather than later. It follows, sadly, that my reasons for my order need to be terse. There is a sharp difference between the reasons for an order and reasoning manufactured after the order to justify it.

6. Under section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

*“If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”*

7. It is common cause that the only real issue in this case is whether or not the City, when it provides temporary emergency accommodation to Ms Mofokeng, must take into account her need to make a basic living from reclaiming waste and where and how she does so.

8. Ms Mofokeng, in her answering affidavit dated as long ago as 19 July 2019 made it clear that she needed to be able to work at or reasonably close to where she lives, given her kind of work. Ms Mofokeng underlined her right to dignity in this context.

9. The City of Johannesburg has filed a latest report in the form of an affidavit dated 22 June 2022, deposed to by Mr Patrick Phophi, who is the Executive Director of

Housing in the City. He shows that the City has engaged, to some extent, with Ms Mofokeng regarding temporary emergency housing. The City has considered various alternative places for Ms Mofokeng. The City has budget constraints and there is a shortage of housing. Persistent land invasions make matters more difficult for the City. The City intends to integrate Ms Mofokeng into an existing community and is able to accommodate Ms Mofokeng at Kya Sands. Ms Mofokeng says that she will not be able to make a living there.

10. Mr Phophi, quite understandably, does not say that there is no place in the greater area of the City that does not meet the needs of Ms Mofokeng.
11. To relocate Ms Mofokeng to a place, otherwise suitable but where she can't earn a basic living such as she presently does, would leave her at risk of not being able effectively to maintain her dignity and look after T. The rights of Rycloff are important, as are those of the City but it would be unfair and therefore unconstitutional to allow Rycloff to have its property while T is hungry. Under section 28 of the Constitution, the rights of children are paramount in a case involving children.
12. On 20 September 2022, the Constitutional Court gave judgment in the case of **Grobler v Phillips** and others [2022] ZACC 32. It is clear that persons who are sought to be evicted as illegal occupiers do not have the right to insist on being relocated to a property of their choice.
13. There is no point in ordering the City to do what it can't do. It seems unavoidable that the City be given the choice of where the alternative accommodation will be provided, as long as this choice falls within certain parameters. I take my cue from the decision in **Grobler**, modified to meet the different facts of the present case.
14. Ideally, court orders are certain and there is no room for debate about their implementation. In cases like the present, it appears unavoidable that an order be made with some elasticity. The only alternative is to make an order, certain in its terms, but which may become overtaken by fast moving events. Such a

course would not avoid the problem that the availability of alternative land is an ever moving target for the City.

15. The City knows what it can and can't do. The City must in my view be trusted to do as best it can as soon as reasonably practicable, subject to a definite time constraint.
16. There has been much criticism in this case against the conduct of the City, particularly by Rycloff and some of the respondents. There seems to have been a change in advice given to the City over the lengthy period it has taken for the matter to get to this hearing.
17. In my order below, I shall attempt to do justice to all concerned and in a way which lowers the heat rather than raises it, concerning all issues, including that of costs. Accordingly, there shall be no costs order, particularly as this case concerns Constitutional rights.

## **ORDER**

1. The 1<sup>st</sup> to 71<sup>st</sup> respondents are to vacate Portion 971 Randjiesfontein No. 405 JR situated in Region A of the City of Johannesburg by 4 April 2023 provided that the City has given the 1st to 71st respondents at least one month's written notice that the City has complied with paragraphs 1-3 of this order.
2. The City must, by no later than 4 March 2023, on land of its choice but within the Municipal area of the City, provide temporary emergency accommodation for the 1<sup>st</sup> to 71<sup>st</sup> respondents which accommodation meets the following specifications :
  - 2.1 each unit to be at least 24 square metres in extent
  - 2.2 have a galvanised roof and is water-proof
  - 2.3 each unit to be within reasonable proximity to communal ablution facilities
  - 2.4 there must be reasonable provision, which may be communal, for toilet facilities with water -borne sewerage

- 2.5 there must be reasonable provision, which may be communal, for fresh water.
3. The land chosen by the City shall be land where the 1<sup>st</sup> to 71<sup>st</sup> respondents can live at night and there lawfully and safely sort the reclaimed waste and from where they can reasonably go during the day to use their flat-bed trollies lawfully and safely to collect waste.
  4. The City is to provide transport to the new accommodation free of charge.
  5. This order is not to be interpreted as allowing the 1<sup>st</sup> to 71 respondents to jump any queue for housing.
  6. There is no costs order.

**HEARD** : **4 October 2022**

**DELIVERED** : **4 October 2022**

#### **APPEARANCES**

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