



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Non-Reportable

Case no: 125/2018

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

FIRST APPELLANT

EXECUTIVE MAYOR, EKURHULENI MUNICIPALITY

SECOND APPELLANT

CITY MANAGER, EKURHULENI MUNICIPALITY

THIRD APPELLANT

**HEAD OF DEPARTMENT, HUMAN SETTLEMENT,
EKURHULENI MUNICIPALITY**

FOURTH APPELLANT

and

THUPETJI ALEXANDER THUBAKGALE

FIRST RESPONDENT

EKURHULENI CONCERNED RESIDENTS ASSOCIATION

SECOND RESPONDENT

**THE RESIDENTS OF WINNIE MANDELA INFORMAL
SETTLEMENT**

THIRD TO 134th RESPONDENT

Neutral citation: *Ekurhuleni Metropolitan Municipality & others v Thupetji Alexander Thubakgale & 134 others* (125/2018) [2018] ZASCA 76 (31 May 2018)

Bench: Ponnann, Swain and Mbha JJA and Davis and Pillay AJJA

Heard: 2 May 2018

Delivered: 31 May 2018

Summary: Municipality – right to housing – dates fixed by court for delivery of houses incapable of fulfilment.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Teffo J sitting as court of first instance):

1. The appeal is upheld.
2. Paragraphs 1.1 and 1.2 of the order of the high court are set aside and substituted with the following:
 - ‘1. The first respondent is ordered to:
 - 1.1 provide each of the first and 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 30 June 2019;
 - 1.2 register the residents as the titleholders of their respective erven by 30 June 2020.’
3. The first appellant shall pay the respondents’ costs, including the costs of two counsel.

JUDGMENT

Ponnan JA (Swain and Mbha JJA and Davis and Pillay AJJA concurring):

[1] On 15 December 2017 and on the application of the respondents, the Gauteng Division of the High Court (per Teffo J) issued the following order against the first appellant, the Ekurhuleni Metropolitan Municipality (the Municipality):

‘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 an 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 enroll 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.'

[2] On 8 February 2018 Teffo J granted leave to the Municipality to appeal against paragraphs 1.1 and 1.2 of her order. In its notice of appeal filed with this court, the Municipality contended that the effective dates in those paragraphs should be the 31 December 2021 and 31 December 2022 respectively.

[3] At the hearing of the appeal on 2 May 2018, counsel for the Municipality took the view that the dates fixed by Teffo J lacked a proper factual foundation. Whether that was so hardly need detain us, because it came to be accepted by the parties that as the evidence on record was dated, leave should be granted to the: (a) Municipality to file an updated progress report with the registrar of this court; and (b) respondents to file a response thereto, if so advised.

[4] The Municipality states in its updated progress report dated 8 May 2018 that 'the project manager . . . estimates that the houses in Phase 1 will be completed and ready for the 134 [Respondents] to occupy by 30 June 2019'. In an affidavit filed in response to the Municipality's report, the respondents' attorney persists in the assertion that the Municipality is 'more than capable of providing the respondents . . . with the houses to which they are entitled by the deadline the High Court set: 31 December 2018'. There is, however, nothing in that affidavit to gainsay the statement by the Municipality's that the houses will only be ready for occupation some six months after the date fixed by the high court. In these circumstances, the dates fixed by the high court, which are incapable of fulfillment, cannot stand. To that extent the appeal must accordingly succeed.

[5] The Municipality commendably accepted that, irrespective of its success in the appeal, it would be liable for the costs of the appeal.

[6] In the result:

1. The appeal is upheld.
2. Paragraphs 1.1 and 1.2 of the order of the high court are set aside and substituted with the following:
 - '1. The first respondent is ordered to:
 - 1.1 provide each of the first and 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 30 June 2019;
 - 1.2 register the residents as the titleholders of their respective erven by 30 June 2020.'
3. The first appellant shall pay the respondents' costs, including the costs of two counsel.

V M Ponnar
Judge of Appeal

APPEARANCES:

For First to Fourth Appellants: C Georgiades (with him Z Ngwenya)

Instructed by:

Tshiqi Zebediela Inc, Kempton Park

Matsepes Attorneys, Bloemfontein

For Respondents: S Wilson (with him I De Vos)

Instructed by:

Socio Economic Rights Institute, Braamfontein

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