THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 144/2021

In the matter between:

THE CITY OF CAPE TOWN	**APPELLANT**
and	
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION	**FIRST RESPONDENT**
THE HOUSING ASSEMBLY	**SECOND RESPONDENT**
BULELANI QOLANI	**THIRD RESPONDENT**
THE ECONOMIC FREEDOM FIGHTERS	**FOURTH RESPONDENT**
THE PERSONS WHO CURRENTLY OCCUPY ERF 544, PORTION 1, MFULENI	**FIFTH RESPONDENT**
THE MINISTER OF HUMAN SETTLEMENTS	**SIXTH RESPONDENT**
THE MINISTER OF COOPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS	**SEVENTH RESPONDENT**

THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE **EIGHT RESPONDENT**

THE MINISTER OF POLICE **NINTH RESPONDENT**

WESTERN CAPE PROVINCIAL COMMISSIONER **TENTH RESPONDENT**

Neutral Citation: City of Cape Town *v The South African Human Rights Commission* (Case no 144/2021) [2021] ZASCA 182 (22 December 2021)

Coram: MATHOPO, SCHIPPERS, NICHOLLS, MBATHA and MABINDLA-BOQWANA JJA

Heard: 15 November 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be have been at 14h00 on 22 December 2021.

Summary: Civil Procedure – appealability of interim orders – not appealable when subject to alteration by high court – exception is where grave injustice would occur – claim for compensation final in nature – cannot be granted in interim proceedings

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Meer and Allie JJ concurring):

1. The appeal against paragraphs 1- 4 of the order of the court a quo is dismissed with costs, including the costs of two counsel.
2. The appeal against paragraph 5 of the order of the court a quo succeeds. The order is set aside and replaced with the following: 'The second intervening party's claim against the first respondent for the return of all building material and personal possessions, seized by the its Anti Land Invasion Unit, alternatively, to provide each household with equivalent building materials and to pay each occupant R2000 as compensation for loss of personal possessions, is dismissed.'

JUDGMENT

Nicholls JA (Mathopo, Schippers, Mbatha and Mabindla-Boqwana JJA concurring)

[1] This is an appeal against an interim order granted by the Western Cape Division of the High Court, Cape Town (high court). South Africa, like most countries in the world, declared a national state of disaster due to the Covid-19 pandemic. During the period 26 March – 30 April 2020, the country was under a 'hard lockdown' in terms of section 23(1)*(b)* of the Disaster Management Act 57 of 2002, followed by various levels of

lockdown, which persist until today. Regulations in terms of the Act severely curtailed evictions.[1] In July 2020, a video recording of a naked man (later identified as Mr Bulelani Qolani) being dragged out of his dwelling in an informal settlement by officials of the City of Cape Town, went viral on social media platforms.

[2] These events prompted the South African Human Rights Commission (the SAHRC) together with Mr Qolani and the Housing Assembly – a social justice movement, to launch an urgent application in the high court. In essence, the relief sought was aimed at preventing the City of Cape Town (the City) from evicting persons and demolishing structures, whether occupied or unoccupied, during the national state of disaster, without a court order. This was couched as interim relief (Part A of the notice of motion) pending a decision on Part B which primarily dealt with the constitutionality of the City's conduct and its Anti-Land Invasion Unit (ALIU) which carried out the evictions and demolitions. Further relief sought in Part B was whether the defence of counter-spoliation permitting the eviction from, and demolition of, a structure whether occupied or unoccupied, was constitutional and valid in terms of the law.

[3] At the commencement of the hearing in the high court, the Economic Freedom Fighters (EFF) and the occupiers of Erf 544, Mfuleni (the Occupiers) were granted leave to intervene as interested parties. Apart from supporting the SAHRC and others, they sought additional relief that

[1]Regulation 36(1) of the Alert Level 3 Regulations Government Gazette No: 43364 GN 608 which applied from 1 June 2020 provided that:
'(1) Subject to sub-regulation (2), a person may not be evicted from his or her land or home during the period of Alert Level 3 period.
(2) A competent court may grant an order for the eviction of a person from his or her land or home in terms of the provisions of the Extension of Security of Tenure Act, 1997 (Act no 62 of 1997) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998) . . .'

the City return all building materials and personal possessions seized from them, alternatively, provide each household, whose dwelling had been destroyed, with the equivalent building materials and that each occupant of the property be paid R2000 as compensation for the loss of their personal possessions.

[4] Judgment in the urgent application, Part A, was handed down on 25 August 2020 in the high court (per Meer and Allie JJ). The court a quo, applying a purposive interpretation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), granted the interim relief sought, pending the determination of Part B. The orders sought by the intervening parties were also granted, subject to minor amendments.

[5] The City applied for leave to appeal the interim orders to the high court which was refused. The appeal is with the leave of this Court.

[6] The City is the appellant before this Court; SAHRC is the first respondent; the Housing Assembly is the second respondent; Mr Bulelani Qolani is the third respondent; the fourth respondent is the EFF and the Occupiers are the fifth respondents. The sixth to tenth respondents are the Minister of Human Settlements, the Minister of Co-operative Governance and Traditional Affairs, the Minister of Police, National Commissioner of Police, the Western Cape Provincial Commissioner of Police, respectively. These state respondents have not participated in the appeal and have elected to abide by the decision of the Court. Any appeal relating to the conduct of the police is accordingly abandoned.

[7] The hearing of Part B spanned seven days of argument and was finalised on 5 November 2021 by a full court of the Western Cape. Judgment was reserved, and is expected to be delivered early next year. The respondents are in agreement that, with Part B having been heard, this appeal is now to all intents and purposes moot. The City of Cape Town persists with its appeal despite the imminent judgment of the full court.

[8] This Court in *Zweni v Minister of Law and Order*[2] *(Zweni)* set out the principles which make an order susceptible to appeal. These are that the decision must be final in effect and not susceptible to alteration by a court of first instance; it must be definitive of the rights of the parties; and it must have the effect of disposing of at least a substantial portion of the relief claimed in the proceedings. Interim orders, by their very nature, are generally not final and will meet none of the criteria set out in *Zweni*, rendering them unappealable in most cases.[3] The rationale informing this consideration is self-evident as courts are loath to allow court time and resources to be squandered on appeals which will be subject to reconsideration by the court a quo when the final relief is determined. However, this is not an inflexible rule and the standard is always whether it is in the interests of justice to hear the appeal.[4]

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[2] *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I-533B.

[3] *City of Tshwane Metropolitan Municipality v Afriforum and Another* [2016] ZACC 19; 2016 (6) SA 279 (CC) para 40; *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 523J-533A; *Cloete and Another v S; Sekgala v Nedbank Limited* [2019] ZACC 6; 2019 (5) BCLR 544 (CC); 2019 (4) SA 268 (CC); 2019 (2) SACR 130 (CC) para 39.

[4] *Philani-Ma-Afrika and Others v Mailula and Others* [2009] ZASCA 115; 2010 (2) SA 573 (SCA); [2010] 1 All SA 459 (SCA) para 20. See also *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 para 47-55; *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012(6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) para 24; and *Machele and Others v Mailula and Others* [2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC) para 21 - 22.

[9] As stated by the Constitutional Court in *Cloete v S; Sekgala v Nedbank Limited*:[5]

'[57] . . . this Court has held that in considering whether to grant leave to appeal, it is necessary to consider whether "allowing the appeal would lead to piecemeal adjudication and prolong the litigation or lead to the wasteful use of judicial resources or costs". Similarly, in *TAC I*, this Court stated that "it is undesirable to fragment a case by bringing appeals on individual aspects of the case prior to the proper resolution of the matter in the court of first instance". This is one of the main reasons why interlocutory orders are generally not appealable while final orders are.

[58] This Court has held that it will only interfere in pending proceedings in the lower courts in cases of "great rarity – where grave injustice threatens, and where intervention is necessary to attain justice".' (Footnotes omitted.)

[10] After confirming that the interests of justice were paramount in assessing the appealability of an interim order, the Constitutional Court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[6] went on to set out what factors a court should consider in assessing where the interests of justice lay:

'. . . To that end, [a court] must have regard to and weigh carefully all the germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable.'

[11] The interests of justice standard will inevitably involve a consideration of any irreparable harm. To successfully appeal an interim

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[5] *Cloete and Another v S; Sekgala v Nedbank Limited* [2019] ZACC 6; 2019 (5) BCLR 544 (CC); 2019 (4) 268 (CC); 2019 (2) SACR 130 (CC).
[6] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC) para 25.

order an applicant will have to show that it will suffer irreparable harm if the interim appeal were not granted.[7] Even so, stated the Constitutional Court in *International Trade Administration Commission v SCAW South Africa (Pty)*[8], irreparable harm although important, is not the sole consideration and the interests of justice require an evaluation of a number of factors:

'. . . The test of irreparable harm must take its place alongside other important and relevant considerations that speak to what is in the interests of justice, such as the kind and importance of the constitutional issue raised; whether there are prospects of success; whether the decision, although interlocutory, has a final effect; and whether irreparable harm will result if the appeal is not granted . . .'.

[12] The first enquiry is to ascertain whether the orders granted by the high court have a final effect. For this it is necessary to compare the orders granted in respect of Part A and the orders sought in Part B, to ascertain to what extent they overlap.

[13] The interim orders granted in Part A (the order) are:

'Pending Part B

1. That the First Respondent, its Anti-Land Invasion Unit (ALIU) and any private contractors appointed by the First Respondent to do the same or similar work or to perform the same or similar functions as the ALIU, are interdicted and restrained from evicting persons from, and demolishing, any informal dwelling, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, whether occupied or unoccupied, throughout the City Metropole, while the state of disaster promulgated by the Third Respondent in terms of section 23(1)*(b)* of the

[7] *Machele and Others v Mailula and Others* [2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC) para 27. See also *Minister of Health v Treatment Action Campaign* (No 1) [2002] ZACC 16; 2002 (5) SA 703 (CC) para 12.

[8] *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC) para 55.

Disaster Management Act 57 of 2002, as amended, remains in place, except in terms of an order of court duly obtained;

2. That to the extent that the First Respondent and its authorised agents (such as the ALIU and private contractors aforementioned) evict and/or demolish any informal dwelling, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, whether occupied or unoccupied, in terms of a court order, that they do so in a manner that is lawful and respects and upholds the dignity of the evicted persons, and that they are expressly prohibited from using excessive force, and/or from destroying and/or confiscating the materials which is the property of the evictees;
3. That to the extent that any evictions and/or demolitions are authorised by court order, that the South African Police Services, when its members are present during an eviction or demolition is directed to ensure that the said evictions are done lawfully and in conformity with the Constitution, in accordance with the SAPS's Constitutional duty to protect the dignity of the persons evicted.
4. That the First Respondent is interdicted and restrained from considering, adjudicating and awarding any bids or tenders received in response to Tender 308S/2019/20 for "The Demolition of Illegal and Informal structures in the City of Cape Town".
5. That the First Respondent is to return within a week of the date of this order all building materials and personal possessions seized by its Anti-Land Invasion Unit from the second applicant between the period 1 May 2020 to date.
    5.1 The Attorney for the Second Intervening Party is directed to furnish the First Respondent with a list of names of those persons claiming compensation in the sum of R2000 each in lieu of loss of personal belongings
    5.2 The First Respondent is to pay R2000 to each person whose entitlement to compensation is agreed upon. In the event of disagreement by the First Respondent as to entitlement to compensation once the list is presented, the parties may approach the Court for relief.

6. That the First Respondent shall pay the costs of the application save for the costs in respect of 25 July 2020. The Fourth, Fifth and Sixth Respondents shall bear the costs occasioned by their opposition to the relief sought at prayer 2.3 of the Notice of Motion.'

[14] In Part B the relief sought by the respondents, in summary, is:

1. A declaration that the evictions and demolitions, referred to Part A, without a valid court order, are unlawful and inconsistent with the Constitution.
2. That to the extent that the evictions and demolitions take place in terms of a court, this is done in the presence of the police who should ensure that they are conducted lawfully in a manner that protects their dignity and accords with the Constitution.
3. A declaration that the decision of the City to mandate the ALIU to demolish structure which it believes to be unoccupied, is unlawful, unconstitutional and be set aside.
4. That the procedure of using a visual assessment to determine whether or not a structure is occupied as a home, and therefore eligible to be demolished, be declared unlawful, unconstitutional and be set aside.
5. That the common law principle of counter spoliation, insofar as it authorises the eviction from, and the demolition of, any structure whether occupied or unoccupied be declared invalid and unconstitutional.
7. That the decision to adjudicate Tender 308S/2019/20 for "The Demolition of Illegal and Informal Structures in the City of Cape Town" be declared unlawful, unconstitutional and be set aside.

[15] A cursory comparison of the orders sought in Part A with those in Part B immediately reveals that the only issues excluded from the

determination of the full court is the question of the return of the building materials seized by the ALIU; the compensation of R2000 in lieu of loss of personal belongings and the question of costs. This much was conceded by counsel for the City. Nonetheless this Court is called upon by the City to address all the interim orders made against it, without exception, on the basis that the court a quo did not apply the correct test in finding that the requirements for interim interdictory relief had been met.

[16] The next enquiry is whether there will be irreparable harm or a grave injustice to the City if any of the interim orders are not set aside. It is difficult to conceive of a situation where judicial oversight of evictions and demolitions could ever amount to irreparable harm. Or indeed a declarator that, if an eviction or demolition is carried out in terms of a court order, the ALIU should act lawfully and constitutionally, and the police, if present, should ensure that this is done. This is precisely how the police and ALIU are legally obliged to conduct themselves, irrespective of any court order. The police respondents have not appealed, presumably in acknowledgment of this fact. Significantly, the City is not precluded from evicting persons and/or carrying out demolitions. It is merely prohibited from doing so without judicial oversight. There can be no irreparable harm if the City is compelled to seek a court order before evicting persons during the national state of disaster, and pending Part B.

[17] The interpretation of PIE, particularly whether it applies to unoccupied structures, and the unconstitutionality of counter-spoliation, its scope and meaning in the context of evictions, are issues to be determined in Part B. For this Court to entertain an appeal in respect of those issues which have already been argued, and will be determined by the full court in the Western Cape, would not only usurp the function of that court, but

lead to parallel judgments on the same issue, delivered a few months apart. This gives rise to the potential for conflicting decisions between the high court and this Court, clearly a most undesirable outcome to be avoided, if at all possible. It is exactly this piecemeal adjudication that the Constitutional Court has deprecated.[9]

[18] Insofar as the adjudication of the tender is concerned, the City argues that paragraph 4 of the order was predicated upon incorrect facts but was, in any event, unnecessary. This is because any harm that may be apprehended would be covered under paragraph 2 of the order. This might be so but the tender, too, is the subject matter of Part B. The adjudication of the tender will be determined by the full court which would render any decision that this Court may give on an interim basis, irrelevant.

[19] None of the relief sought in paragraphs 1- 4 of the order is final in effect. Nor will any irreparable harm or grave injustice occur should the interim orders remain unaltered until the final relief is determined. The interests of justice do not dictate that the interlocutory orders in these paragraphs are appealable and the appeal in respect of these interim orders falls to be dismissed.

[20] The only issue, other than costs, which the determination of Part B will not finally resolve, is that of the monetary compensation of R2000 in lieu of loss of personal belongings and the return of the building materials. The relief the Occupiers sought in their notice of motion was the return of their building materials and personal possessions.[10] In the alternative, an

[9] *Cloete and Another v S; Sekgala v Nedbank Limited* [2019] ZACC 6; 2019 (5) BCLR 544 (CC); 2019 (4) 268 (CC); 2019 (2) SACR 130 (CC).
[10] It should be noted that para 5 of the order directed the City to return items seized by the 'second applicant' – the Housing Assembly. This is clearly an error and should have read the 'second intervening party'- the Occupiers.

order was sought that the City provide each household whose dwelling had been destroyed with equivalent building materials, and pay each occupant the sum of R2000 as compensation for loss of their personal possessions. Notwithstanding the above, the order granted by the high court was not cast in the alternative. Instead, it directed the City to return all building materials and personal possessions within one week, *and* that R2000 be paid as compensation for loss of personal possessions.

[21] For this award the high court relied on s 172(1)*(a)*[11] of the Constitution which empowers a court to make an order that just and equitable where there has been a breach of constitutional rights, including the award of constitutional damages. While courts enjoy a wide discretion as to what remedy would be effective, suitable and just in any given situation,[12] the high court could not avail itself of an award of constitutional damages on the facts of this case. In the first place the relief granted was final and not of an interim nature. The order has an immediate effect and will not be reconsidered on the same facts in the final proceedings. While paragraph 5.2 of the order makes provision for recourse to the high court, this relates to the entitlement of a particular individual rather than the principle itself which remains final.

[22] Once the relief sought is final, the *Plascon Evans* rule[13] applies and the respondent's version must prevail, together with the admitted facts put up by the applicant, unless these are far-fetched and clearly untenable. The

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[11] Section 172 of the Constitution provides:
'(1) When deciding a constitutional matter within its power, a court—
(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'.
[12] *Thubakgale and Others v Ekurhuleni Metropolitan Municipality* and Others [2021] ZACC 45 para 43.
[13] *Plascon- Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] 2 All SA 366 (A); 1984 (3) SA 623 (A); 1984 (3) SA 620.

City admits that it seized the building materials of the Occupiers. However, it denies taking any of their personal possessions when it demolished the structures.

[23] This denial alone should be the end of the matter, particularly where there is no evidence of the nature of the personal effects, the value thereof and from whom they were taken. For payment of compensation the Occupiers placed reliance on this Court's decision in *Ngomane* v *City of Johannesburg Metropolitan Municipality and Another*[14] (*Ngomane*), where constitutional damages were awarded. *Ngomane* dealt with the destruction and confiscation of the property of a group of homeless people living under a bridge in the city of Johannesburg. After finding that the removal and destruction of their personal effects was an arbitrary deprivation of their right to privacy enshrined in s 14*(c)* of the Constitution, which included the right not to have their property seized, the Court ordered compensation of R1500 per person. Despite there being other remedies at their disposal, in light of the applicants' desperate circumstances, this Court determined that an award of constitutional damages was the appropriate remedy.

[24] The fundamental difference in *Ngomane* is that the Court there was dealing with final relief and the conduct of the City of Johannesburg was found to be unconstitutional. Here not only has the City denied taking any personal possessions, but any interim findings of unconstitutionality by the high court are subject to reconsideration by the full court. The final word on whether the evictions and demolitions were unlawful, or amounted to an arbitrary deprivation of property, has not been spoken. This is what the

[14] *Ngomane and Others v City of Johannesburg Metropolitan Municipality and Another* [2019] ZASCA 57; [2019] 3 All SA 69 (SCA); 2020 (1) SA 52 (SCA) para 27.

full court will finally determine. There was no basis, at that stage, for the high court to have awarded financial compensation to the Occupiers. Here there was a paucity of detail whereas in *Ngomane* there was evidence of the nature of the items removed and destroyed and a list of their owners. Accordingly, the appeal in regard to the payment of compensation must succeed.

[25] The high court also directed the City to return all building materials seized by the ALIU 'between the period 1 May 2020 to date'[15]. As with the personal possessions, the details of building materials seized, and from whom they were taken, are scanty. In the main, the confiscations relate to the demolitions at Mfuleni, commonly known as Zwelethu, Ocean View, and the demolition of Mr Qolani's property.

[26] Mr Viwe Sigenu, the deponent on behalf of the Occupiers, stated that seven evictions had taken place in Zwelethu from the end of May 2020 to 13 July 2020. Structures had been demolished and 'on some days' the ALIU would confiscate building materials and personal possessions. Not a single owner of any building materials was identified. The City's response was that the area spans two properties, one owned by the Cape Nature reserve and the other by the City. The Occupiers are aware that the Cape Nature property is not owned by the City as they were served with an application by the Western Cape Nature Conservation Board. This resulted in an interim interdict authorising the City to take reasonable steps to demolish any illegally erected structures on the Cape Nature property, to prevent any persons from entering the area and to remove such persons and their belongings.[16]

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[15] The date of the order was 25 August 2020.
[16] *Western Cape Nature Conservation Board v The Illegal Trespassers of Erf 544 and Others* (Case Number 8913/2020) (WCC).

[27] The Housing Assembly referred to an eviction operation which took place in Ocean View on 15 May 2020. That day, Ms Kashiefa Achmat, the chairperson of the Housing Assembly stated that she was present when the ALIU demolished structures and confiscated materials. No detail is provided as what building materials were confiscated, and from whom they were taken. The City's response is that it acted on a complaint of an unlawful land invasion and ten unoccupied structures were dismantled and most of the building material removed. Moreover, it contends that the removal of unoccupied structures was expressly contemplated in a court order of the same division dated 17 April 2020.[17]

[28] The eviction of Mr Qolani and the demolition of his structure took place on 1 July 2020. The version of the City was that the structure allegedly occupied by him, was in fact unoccupied. ALIU officials stated that his structure had not been erected when they attended the site the day before, on 30 June 2020.

[29] In short, the City alleged that the various demolitions that took place over that period, concerned structures that were unoccupied, and it was therefore entitled to demolish them. All building materials removed are kept in storage for a period of 21 days, after which they are disposed of. The Occupiers are entitled to make arrangements to collect their building materials from the City's depot in Ndabeni. This is not denied.

[30] Much of the content of the City's answering affidavit and supplementary answering affidavit was disputed in reply. This underscores the difficulty in granting the relief sought in its present formulation. As

[17] *Habile and Others v The City of Cape Town* (Case No 5576/2020) (WCC).

Harms JA said in *NDPP v Zuma*,[18] motion proceedings 'are all about the resolution of legal issues based on common cause facts' and 'cannot be used to resolve factual disputes because they are not designed to determine probabilities'. For these reasons, the appeal against paragraph 5 of the high court's order must succeed.

[31] This does not mean that the door is closed to the Occupiers. If, after a decision is made in respect of Part B, the conduct of the City is found to be unlawful, it is open to them to apply for the appropriate relief.

[32] What remains is the appeal against costs. The City complains that costs are not generally awarded in interlocutory proceedings as the court finally hearing the matter may be better placed to determine whether the application was well-founded. Costs are always within the discretion of the court unless it has misdirected itself, thereby reaching a decision that could not have reasonably been made if it had properly applied itself to the relevant facts and principles.[19] The high court gave reasons for its decision. There is no indication that the high court failed to exercise its discretion judicially. In any event, the appeal against costs was not pursued with much enthusiasm by counsel for the City.

[33] Concerning the costs of this appeal, the costs should follow the result, and the respondents are, to an overwhelming extent, the successful parties. We were urged to allow costs for three counsel. There is no justification for this.

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[18] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 26.

[19] *Trencon Construction (Pty) Ltd v Industrial Development Corporation of SA Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) at para 88, quoting from *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 11.

[34] In the result, the following order is made:

3. The appeal against paragraphs 1- 4 of the order of the court a quo is dismissed with costs, including the costs of two counsel.
4. The appeal against paragraph 5 of the order of the court a quo succeeds. The order is set aside and replaced with the following: 'The second intervening party's claim against the first respondent for the return of all building material and personal possessions, seized by the its Anti Land Invasion Unit, alternatively, to provide each household with equivalent building materials and to pay each occupant R2000 as compensation for loss of personal possessions, is dismissed.'

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C H NICHOLLS

JUDGE OF APPEAL

APPEARANCES:

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Instructed by: Ian Levitt Attorneys, Johannesburg

England Slabbert Attorneys Inc, Cape Town