



CONSTITUTIONAL COURT OF SOUTH AFRICA

Alias Mtolo and Another v Theunis Christoffel Lombard and Others

CCT 269/21

Date of Judgment: 8 November 2021

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 8 November 2021 at 10h00 the Constitutional Court handed down judgment on an urgent application for leave to appeal.

The applicants, Mr Alias Mtolo and Mrs Maheneng Mtolo, lived with their children on property owned by the fourth respondent, Mrs Maria Helentje Lombard. Mr Mtolo was employed by the first respondent, Mr Theunis Christoffel Lombard. This property was sold to the third respondent, Mr Jacobus Hunter. The applicants claimed that, despite an assurance by the first respondent that they could reside on the property until they secured alternative accommodation, the first respondent removed the roof and windows of their house, effectively evicting them. The applicants averred that as a result, they live in the open, with their eight children sleeping in the car. All this has affected the children's schooling, in particular that of two of the children who are in grade 12. The applicants approached the South Gauteng High Court challenging the lawfulness of the eviction. Antonie AJ ordered the first and fourth respondents to restore the house to a state fit for human occupation and allow the applicants to resume possession of it. The High Court also granted the applicants leave to approach it on an urgent basis in the event of non-compliance with the order. Subsequently, the applicants brought an urgent High Court application, alleging that the house remained unfit for human occupation. In response, the respondents alleged that they did comply with the court order. They also averred that the applicants had since secured alternative accommodation. Dippenaar J struck the matter from the roll for lack of urgency.

The applicants approached the Constitutional Court persisting in their assertion that Antonie AJ's order was not complied with.

In a unanimous judgment, the Constitutional Court granted the applicants leave to appeal directly to it on an urgent basis. It held that the Mtolo family would suffer irreparable harm if they were made to wait for the next available date for a hearing on the ordinary motion court roll, which at the time of the application was 22 April 2022. The Court rejected the first and fourth respondents' assertion that they had complied with the order of Antonie AJ and ordered them to comply with the order forthwith so as to restore the dignity of the applicants. Having held that it was not enough for these respondents to simply place the roof on top of the wall, the Court ordered them to do anything that is integral to the fixing of the roof.

The Court directed the Emfuleni Local Municipality to appoint a suitably qualified person to inspect the house and prepare a report on whether it was fit for human occupation in the event that the applicants said it was not. The Court remitted the matter to the High Court for supervision of compliance with the order.