CONSTITUTIONAL COURT OF SOUTH AFRICA

Cases CCT 173/13 and CCT 174/13

In the matter between:

SOUTH AFRICAN INFORMAL TRADERS FORUM	First Applicant
AYANDA KELA	Second Applicant
ROSEMARY NDEBELE	Third Applicant
ONE THOUSAND TWO HUNDRED AND EIGHT FURTHER APPLICANTS	Fourth to 1211th Applicants

and

CITY OF JOHANNESBURG	First Respondent
JOHANNESBURG METROPOLITAN POLICE DEPARTMENT	Second Respondent
EXECUTIVE MAYOR OF THE CITY OF JOHANNESBURG	Third Respondent
CITY MANAGER OF THE CITY OF JOHANNESBURG	Fourth Respondent
CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT	Fifth Respondent
SOUTH AFRICAN NATIONAL TRADERS RETAIL ASSOCIATION	Sixth Respondent
CENTRAL JOHANNESBURG PARTNERSHIP	Seventh Respondent

And in the matter between:

SOUTH AFRICAN NATIONAL TRADERS RETAIL ASSOCIATION	Applicant
and	
CITY OF JOHANNESBURG	First Respondent
JOHANNESBURG METROPOLITAN POLICE DEPARTMENT	Second Respondent
EXECUTIVE MAYOR OF THE CITY OF JOHANNESBURG	Third Respondent
CITY MANAGER OF THE CITY OF JOHANNESBURG	Fourth Respondent
CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT	Fifth Respondent
CENTRAL JOHANNESBURG PARTNERSHIP	Sixth Respondent
SOUTH AFRICAN INFORMAL TRADERS FORUM	Seventh Respondent
AYANDA KELA	Eighth Respondent
ROSEMARY NDEBELE	Ninth Respondent
ONE THOUSAND TWO HUNDRED AND EIGHT FURTHER RESPONDENTS	Tenth to 1217th Respondents

Neutral citation:	*South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC 8
Coram:	Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Madlanga J, Mhlantla AJ, Nkabinde J and Zondo J
Heard on:	5 December 2013
Order granted:	5 December 2013

Judgment on: 4 April 2014

Summary: Urgent application – appealability of interim orders – unlawful evictions – interim relief – South African Informal Trading By-Laws and Trading Policy

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JUDGMENT

MOSENEKE ACJ (Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Madlanga J, Mhlantla AJ, Nkabinde J and Zondo J concurring):

Introduction

[1] On 5 December 2013 this Court heard, as a matter of urgency, two applications together.[1] Both sought leave to appeal a decision of the South Gauteng High Court (High Court), per Monama J. We made the following order:

> "1. Leave to appeal directly to this Court on an urgent basis is granted.
>
> 2. The appeal is upheld.
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> 3. The order of the South Gauteng High Court, Johannesburg, made on 27 November 2013, under case number 43427/13, is set aside.
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> 4. The following order is made:
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> a) Pending the determination of Part B of the application in the High Court, the first to fifth respondents are interdicted from interfering with the trading of the applicants listed in Annexures A and B to this order at the locations they occupied immediately before their removal between 30 September and 31 October 2013.

[1] One brought by the South African Informal Traders Forum under CCT 173/13 and another by the South African National Traders Retail Association under CCT 174/13.

b) The first to fifth respondents are directed to pay the applicants' costs in this Court and in the High Court including, in each case, the costs of two counsel."

[2] This Court now furnishes its reasons for the order.

[3] When women and men in government disregard the law, their conduct may very well cause much hardship, particularly for the vulnerable amongst us. The facts of this case show so and remind us of the words of our beloved and departed President Nelson Rolihlahla Mandela:

> "Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order".[2]

Parties

[4] The first applicant in the first application[3] is the South African Informal Traders Forum (Traders Forum). The second and further applicants (the traders) are 1 210 people who, until October 2013, were trading lawfully on 24 street blocks in the inner city of Johannesburg with the permission of the City of Johannesburg (City or

[2] Address at the International Ombudsman Institute VIIth International Conference on Balancing the Exercise of Governmental Power and its Accountability, delivered at Durban, 2000.

[3] CCT 173/13.

first respondent). The applicant in the second application[4] is the South African National Traders Retail Association (Retail Association). It represents 952 traders specified in an annexure to the application. They too trade in the inner city with the requisite written permission of the City under its By-Laws and Trading Policy.[5]

[5] The City opposes the relief sought. It has been cited together with its other functionaries as the second to fifth respondents (City respondents).[6] Also cited is the Central Johannesburg Partnership, as the seventh respondent in the first application and the sixth respondent in the second application, which is a non-governmental body that seeks to advance the broad interest of trading and business within the inner city. It supports informal trading but has made submissions on what it considers to be in the best interests of the inner city trading and stops short of opposing the relief sought.

Background

[6] During October 2013, officers of the City's Metro Police forcibly evicted the informal traders from their trading stalls and confiscated their goods. Amongst those evicted were the applicants listed in an annexure to each of the applications. The City

[4] CCT 174/13.

[5] Published in City of Johannesburg Metropolitan Municipality Informal Trading By-Laws, *Provincial Gazette* 66 of 14 March 2012 (By-Laws). See also the Informal Trading Policy of the City of Johannesburg (Trading Policy). Each member is reflected in the City's database of licensed traders. 213 have been issued smartcards. 111 trade in the City's Urban Genesis City Improvement District (CID). Urban Genesis maintains a database, sourced from the City's database of authorised traders, of those traders who trade within the Urban Genesis CID, and those traders are not issued with letters or smartcards. The remaining 628 trade in demarcated areas; some have letters to trade; all 628 are in any event reflected in the City's database of licensed traders.

[6] The second respondent is the Johannesburg Metropolitan Police Department (Metro Police), a municipal entity controlled by the City. The third respondent is Councillor Mpho Parks Tau, the Executive Mayor of the City cited in his official capacity. The fourth respondent is Trevor Fowler, the City Manager, cited in his official capacity as the head of administration of the City. The fifth respondent is Brigadier Zwelibanzi Nyanda. He is cited in his official capacity as the chief of the Metro Police.

has granted to each of the listed applicants written permission to trade in a manner consistent with its By-Laws read with its Trading Policy. Most have traded there for many years. Some as long as twenty years.

[7] The last evictions and confiscations took place on 30 October 2013. The Metro Police were acting on the instructions of the Mayor. From there, the City respondents named the mass eviction of informal traders "the Mayoral Clean Sweep" also known as "Operation Clean Sweep". According to the City, the professed object of "Operation Clean Sweep" was to rid the City of unsightly and disorderly trading areas. These, it alleged, gave rise to disorderliness, criminality and obstruction of citizens' rights to the proper use and enjoyment of facilities in and around trading areas. Although laudable, these objectives behind the City's action are not in issue before us since the City, on the undisputed facts and by its own concession, had gone about achieving its objectives in flagrant disregard of the traders' rights. Even so the City respondents have never suggested that any of the traders in the two applications were trading illegally. The startling feature of the mass evictions was that the City did not bother to distinguish between the traders who have always been doing business legally, and other informal traders who have not.

[8] Faced with indiscriminate evictions, the applicants opened discussions with the City respondents to negotiate a return to their lawful trading activities. Prolonged negotiations followed. On 2 November 2013, the City and the applicants agreed to a process of "verification". This meant that all the traders would submit to a process in

which their rights to ply their goods would be verified and they would be "re-registered". The parties also agreed that the traders would be allowed to return to their trading stalls once they had been "verified" as lawful traders and had "re-registered" themselves.

[9] During the week of 4 November 2013, the applicants were verified as lawful traders and re-registered themselves, but contrary to the arrangement of 2 November 2013, they were not permitted to return to their stalls. Those who did so were forcibly removed by Metro Police who also dismantled the stalls previously used by the traders.

[10] Between 8 and 14 November 2013, the applicants again engaged the City respondents in a further attempt to give effect to the agreement of 2 November 2013. They say it became increasingly clear to them that "Operation Clean Sweep" was not an attempt to verify and re-register the lawful informal traders in the inner city. Instead, it was an initiative to remove them permanently from their trading stalls and relocate some or all of them to unknown "alternative designated areas", and prohibit them from trading in the interim. This is hardly in dispute between the parties. In fact, that design of the City is spelled out forthrightly in a letter from the City to the applicants' attorneys.[7]

[7] The letter dated 13 November 2013 reads in part as follows:

> "Our client has since agreed with the representative of the traders that upon finalisation of the verification process, all traders who meet the requirements for legal trading will be accommodated in alternative designated areas, in compliance with applicable legislation."

Litigation history

[11] On 15 November 2013, the applicants started proceedings for urgent interim relief. They contended that they had permission to trade; that they have been prevented from trading since their eviction; that their livelihood was and continued to be threatened by the City's evictions; that they faced irreparable harm that undermined their fundamental rights to trade and dignity; and that the balance of convenience favoured them. They added that the City's new scheme to relocate the traders was, in any event, unlawful because it had not followed the steps required of it by section 6A of the Businesses Act.[8]

[12] The applicants sought, as they did in this Court, urgent interim relief, permitting them to trade at the locations where they had traded before "Operation Clean Sweep" was implemented. This relief was sought pending a review of three decisions of the City:

(a) the decision taken during the week of 4 November 2013 not to allow the traders to return to their places of business after they had verified and re-registered themselves;

(b) the decision that came to the attention of the applicants on 14 November 2013, to relocate them permanently to undisclosed alternative designated trading areas; and

(c) the decision taken prior to 30 September 2013 to conduct a verification and re-registration process in respect of the applicants by first removing

[8] 71 of 1991.

all of them from their trading locations on the various blocks where they did business prior to "Operation Clean Sweep".

[13] Save to deny that they had not consulted the applicants' representatives, the City did not dispute the existence of "Operation Clean Sweep" and the forcible eviction of the applicants. The City resisted the application on the slim platform that the applicants had not shown that the relief they sought was urgent. Monama J summarily struck the application off the roll, on the footing that it was not urgent. He furnished no written reasons for his decision. The implication was that the applicants would have to re-enrol the matter on the ordinary court roll.[9] This meant that they would have to wait until February 2014 for a possible hearing directed at final relief.

[14] In this Court, the applicants argued that the interests of justice pointed toward hearing the appeal and granting them interim relief. The City respondents did not seriously dispute the facts put up by the applicants. Instead, they confined themselves to arguing that it would not be in the interests of justice to entertain the appeal because the impugned order was interlocutory and not appealable; that the High Court was correct to strike off the application for lack of urgency; and that the applicants failed to show that they would suffer irreparable harm, if interim relief were not granted. The City respondents added, in a somewhat muffled tone, that granting interim relief would trespass into the exclusive executive domain of the local government.

[9] See *Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others* [2006] ZASCA 51; 2006 (4) SA 292 (SCA) at para 9.

Issues

[15] The issues in both applications were identical, predictable and crisp. They emerge readily from the terms of our Court order. They were (a) whether we should hear the appeal against an interlocutory order of the High Court striking the application from the roll and thus refusing the interim interdict; (b) whether, pending the High Court's decision on the merits, we should grant interim relief; and (c) whether the appeal deserves an urgent hearing. Pithily stated, we have to decide appealability, merits of the interim relief and urgency.

Leave to appeal

[16] As always the starting point is our Constitution. Section 167(6) provides:

> "National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—
> (a) to bring a matter directly to the Constitutional Court; or
> (b) to appeal directly to the Constitutional Court from any other court."

[17] This provision makes it plain that the Court has a wide appellate jurisdiction on constitutional matters. It may decide whether to hear an appeal from any court on any constitutional dispute provided it serves the interests of justice to do so. There is no pre-ordained divide between appealable and non-appealable issues. Provided a dispute relates to a constitutional matter, there is no general rule that prevents this Court from hearing an appeal against an interlocutory decision such as the refusal of

an interim interdict.[10] However, it would be appealable only if the interests of justice so demand.[11] Thus, this Court would not without more agree to hear an appeal that impugns an interlocutory decision, especially because such a decision is open to reconsideration by the court that has granted it. Doing so would be an exception rather than the norm.

[18] An even bigger exception would be to hear an appeal against an interlocutory order on an urgent basis. In *Magidiwana* we warned:

> "This Court is not well-equipped to deal with urgent matters in general. Where an appeal relates to a temporary order, this difficulty becomes even more acute."[12] (Footnote omitted.)

[19] It follows that, as a general rule, an urgent appeal to this Court against an interim order should be permitted as a last resort, and when it has been shown, as was the case here, that the High Court or the Supreme Court of Appeal system does not provide a proper urgent procedure which could result in the relief pursued by an applicant.

[20] The question whether a particular interim order is appealable is not novel. This Court has considered the appealability of interim orders. What was different, in each

[10] See *Knox D'Arcy Ltd and Others v Jamieson and Others* [1996] ZASCA 58; 1996 (4) SA 348 (A) at 356H-359E.

[11] See *Magidiwana and Others v President of the Republic of South Africa and Others* [2013] ZACC 27; 2013 (11) BCLR 1251 (CC) (*Magidiwana*) at paras 6-11 and 17; *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) (*OUTA*) at paras 22-30; and *lnternational Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC) (*ITAC*) at paras 47-59.

[12] *Magidiwana* above n 11 at para 8.

case, was the factual setting.[13] The applicable test is whether hearing the appeal serves the interests of justice. In making this determination, the Court must have regard to and weigh carefully all relevant circumstances. The factors that are relevant, or decisive in a particular instance, will vary from case to case. Even so, this Court has developed a collection of factors that help it decide whether to hear an appeal against an interlocutory decision of another court. These include:

(a) the kind and importance of the constitutional issue raised;[14]

(b) whether irreparable harm would result if leave to appeal is not granted;[15]

(c) whether the interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review;[16]

(d) whether there are prospects of success in the pending review;[17]

(e) whether, in deciding an appeal against an interim order, the appellate court would usurp the role of the review court;[18]

(f) whether interim relief would unduly trespass on the exclusive terrain of the other branches of government, before the final determination of the review grounds;[19] and

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[13] *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31; 2013 (2) BCLR 202 (CC) at paras 20-36; *Albutt v Centre for the Study of Violence and Reconciliation, and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (5) BCLR 391 (CC) at paras 21-5; *Machele and Others v Mailula and Others* [2009] ZACC 7; 2010 (2) SA 257 (CC); 2009 (8) BCLR 767 (CC) (*Machele*) at paras 22-4; *United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae) (No 1)* [2002] ZACC 33; 2003 (1) SA 488 (CC); 2002 (11) BCLR 1213 (CC) at paras 4-7; and *Minister of Health and Others v Treatment Action Campaign and Others (1)* [2002] ZACC 16; 2002 (5) SA 703 (CC); 2002 (10) BCLR 1033 (CC) at paras 5-14. See also *Magidiwan*a above n 11 at paras 6-10; *OUTA* above n 11 at paras 23-30; and *ITAC* above n 11 at paras 47-55.

[14] *ITAC* above n 11 at para 55.

[15] See *Machele* above n 13 at paras 23-8.

[16] See *OUTA* above n 11 at para 25.

[17] Id at para 26.

[18] Id.

(g) whether allowing the appeal would lead to piecemeal adjudication and prolong the litigation or lead to wasteful use of judicial resources or legal costs.[20]

[21] We weighed carefully these considerations and concluded that it was in the interests of justice to hear the appeal on an urgent basis. If leave to appeal were not granted the applicants would have suffered severe irreparable harm and yet the balance of convenience favoured them. About these considerations, in *Machele*, albeit in a slightly different context, Skweyiya J observed:

> "The primary consideration in determining whether it is in the interests of justice for a litigant to be granted leave to appeal against an interim order of execution is, therefore, whether irreparable harm would result if leave to appeal is not granted. The applicant would have to show that irreparable harm would result if the interim order were to be granted. A court will have regard to the possibility of irreparable harm and the balance of convenience."[21] (Footnote omitted.)

[22] Another consideration is whether the interim relief would thwart the judicial role of the review court. The order sought by the applicants before this Court would not anticipate any part of the main proceedings to be determined before the High Court in Part B. Nor would it prejudice such proceedings. On the contrary, without an order from this Court, the damage in the interim would be so severe that the applicants' ability to obtain relief from the High Court in Part B would substantially be rendered nugatory. The order sought now is thus no more than a

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[19] Id.

[20] *ITAC* above n 11 at para 50.

[21] *Machele* above n 13 at para 24.

"status quo order" granted in the interests of justice "to prevent what might otherwise be substantial prejudice."[22]

[23] The discussion of the merits will show that the High Court's refusal to grant interim relief is final in effect. There remains no doubt that we had to hear the appeal.

Interim interdict

[24] Once we grant leave to appeal our immediate concern becomes whether we should grant temporary relief. Foremost is whether the applicant has shown a prima facie right that is likely to lead to the relief sought in the main dispute. This requirement is weighed up along with the irreparable and imminent harm to the right if an interdict is not granted and whether the balance of convenience favours the granting of the interdict. Lastly, the applicant must have no other effective remedy.[23]

A prima facie right?

[25] A prima facie right may be established by demonstrating prospects of success in the review.[24] There is no dispute over the entitlement of the applicants to trade in the stalls the City has allocated to them. The traders have clear, undisputed rights under section 4 of the By-Laws to do business in the locations where they traded before they were removed.

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[22] *United Democratic Movement* above n 13 at para 12.

[23] See *OUTA* above n 11 at para 41.

[24] *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691C-G, explained in *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1995 (2) SA 813 (W) at 832D-833H. See also *Johannesburg Municipal Pension Fund and Others v City of Johannesburg and Others* 2005 (6) SA 273 (W) at para 8.

[26] The City's case is that it intended to relocate informal traders to "alternative designated [trading] areas." Section 6A(3) of the Businesses Act prescribes the steps the City must follow to designate a trading area for informal trading.[25] None of these requirements have been followed. The City readily conceded, correctly so, in its papers and during the hearing before this Court that it had not met the prescripts of the statutory provision. The decision to relocate the traders appears flawed.

[27] The City's decision to declare certain areas as prohibited or restricted was not made in accordance with the procedure in section 6A(2)(a) of the Businesses Act.[26] The City confesses to this flaw. It offered to cure the defects in the process it followed while offering an interim arrangement. But the interim solution offered by the City is that the evictions must persist and the traders must settle for relocation to yet unspecified areas or stalls.

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[25] Section 6A(3) provides:

> "Notwithstanding the provisions of any other law, a local authority may—
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> (a) by resolution, after compliance *mutatis mutandis* with the provisions of subsection (2)(b) up to and including (h), lease any verge as defined in section 1 of the Road Traffic Act, 1989, or any portion thereof, to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier;
>
> (b) (i) set apart by resolution and demarcate stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and
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> (ii) in like manner extend, reduce or disestablish any such stand or area;
>
> (c) by agreement let or otherwise allocate any stand or area demarcated under paragraph (b)(i) or otherwise established for such purposes."

[26] Section 6A(2)(a) provides:

> "A local authority may, subject to the provisions of paragraphs (b) up to and including (j), by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendors, pedlar or hawker may be restricted or prohibited."

[28] The City has not identified any lawful ground that permits it to frustrate the enjoyment of these rights. The City does not dispute the unlawfulness of its officials' conduct. Counsel for the City expressly submitted that the City acted unlawfully, but that doing so had been "convenient". These concessions were so extensive that it even seemed conceivable that this Court might grant final relief. The relief sought in the pending review in Part B of the notice of motion is likely to be granted and thus bears prospects of success.

Imminent irreparable harm and balance of convenience

[29] The undisputed evidence showed that the applicants and their families' livelihood depended on their trading in the inner city. They had been rendered destitute and unable to provide for their families for over a month and they would have been precluded from providing for their families for at least another two and a half months until mid-February 2014 at the very earliest.

[30] That, we were told by counsel of both sides, was the earliest date an application for leave to appeal could possibly be heard by the High Court. This is because that application would have to be enrolled in the ordinary course as it had already been adjudged as not urgent. Obviously so, the order striking the application off the roll had a final effect in relation to the possibility of accessing interim relief of trading in the inner city. This meant the financially perilous condition of the traders would have had to remain so until the opposed application for review of the decisions of the City

was finalised and possibly until the final appellate stage. It is hard to imagine how any destitute street vendor would survive a ruinous delay of that kind.

[31] It must be added that the eviction of the traders involved constitutional issues of considerable significance. The ability of people to earn money and support themselves and their families is an important component of the right to human dignity. Without it they faced "humiliation and degradation".[27] Most traders, we were told, have dependants. Many of these dependants are children, who also have suffered hardship as the City denied their breadwinners' lawful entitlement to conduct their businesses. The City has not disputed this. The City's conduct has a direct and on-going bearing on the rights of children, including their direct rights to basic nutrition, shelter and basic health care services.[28] The harm the traders were facing was immediate and irreversible.

[32] The City's response to the applicants' claim of irreparable harm and that the balance of convenience favours them was twofold. First, it readily and correctly conceded the applicants would suffer prejudice or harm but qualified the admission by arguing that the harm would be temporary. Second, the City contended that if the applicants were allowed to return to their trading stalls, the inner city would be "chaotic, uncontrolled and illegal trading with its concomitant crime and grime [will] be permitted to return to the streets of Johannesburg." It referred to the prejudice to

[27] *Minister of Home Affairs and Others v Watchenuka and Another* [2003] ZASCA 142; 2004 (4) SA 326 (SCA); 2004 (2) BCLR 120 (SCA) at para 32.

[28] Section 28(1)(c) of the Constitution.

be suffered by residents of the City "who no longer have access to ATMs, walk-in banks, cinemas, departmental stores, restaurants and other amenities because of criminality that hides among the illegal hawkers."

[33] Clearly, the City was conflating the position of illegal traders with that of the applicant traders. It is open to the City to use all lawful means to combat illegal trading and other criminal conduct. But it has no entitlement to cause harm to lawful, if not vulnerable, traders. Even so, the City argued in the alternative that if the Court were minded to grant the relief sought, the order should return verified lawful traders it evicted in the first instance. Again the City missed the point. It may not remove or evict traders who have a right to trade without observing requirements of its By-Laws.

[34] We were not pointed to any irreversible harm or palpable inconvenience the City might face by acting in accordance with the prescripts of the law in its bid to evict the applicants. The City did not say irreparable harm would be suffered by the residents, should the traders be left to continue trading while the City conducts its expeditious verification process. The prejudice allegedly suffered by the residents, if any, was temporary as compared to the severe irreparable harm the applicants suffered and would have suffered.[29] The City was content to argue, that at the end of the review proceedings, the traders may claim damages suffered, if any. This is no answer to the pressing and urgent temporary relief the applicants asked for. The evidence showed that informal traders were people on limited earnings derived from

[29] As mentioned in [31] above.

their street trading. A promise of possible future recompense may well border on the cynical.

Urgency

[35] At the urging of the City, the High Court struck off the roll the application for interim relief on the ground that it was not urgent. In this Court too, the City placed much store by the urgency contention. Even if the matter was urgent, the argument ran, the applicants could have applied for leave to appeal to the High Court and later petitioned the Supreme Court of Appeal.

[36] We have already said much that shows that the application for interim relief was manifestly urgent. The City had evicted the applicants from their trading areas or stalls and refused to allow them back, even though they had been verified and re-registered at the behest of the City. Although the City admittedly failed to follow the processes in the Businesses Act, it forcibly evicted the applicant traders. Its conduct spawned immediate and acute hardship that left the applicant traders destitute. It was never disputed that they were unable to feed or house themselves or their families. The situation would have only worsened if it persisted.

[37] Another of the City's contentions was that the urgency the applicants relied on was self-created and ought not to be entertained. Even if it is accepted that urgency arose as early as October 2013, it was only prudent and salutary that the applicants

first sought to engage the City before they rushed off to Court.[30] That engagement, as mentioned above, produced the agreement of 2 November 2013.

[38] I find nothing dilatory in the efforts of the applicants to engage the City and persuade it to restore them to their trading positions in the inner city. Their return to their trading stalls remained urgent throughout the engagements or negotiations attempted before an urgent application was launched. Even by the time they approached this Court, their claims were self-evidently urgent and so we concluded.

Costs

[39] No cogent reason was placed before us, nor could we find any, why costs should not follow the event. We ordered the City respondents to pay the costs of the applicants in the High Court and in this Court.

[30] See *Nelson Mandela Metropolitan Municipality v Greyvenouw CC and Others* [2003] ZAECHC 5; 2004 (2) SA 81 (SECLD) at para 34.

In CCT 173/13:

For the Applicants:	Advocate P Kennedy SC, Advocate S Budlender, Advocate S Wilson and Advocate N Muvangau instructed by SERI Law Clinic.
For the First to Fifth Respondents:	Advocate G Malindi SC, Advocate T Machaba and Advocate J Bleazard instructed by Mchunu Attorneys.
For the Seventh Respondent:	Advocate J Raff instructed by Mervyn J Smith Attorneys.

In CCT 174/13:

For the Applicant:	Advocate C Georgiades and Advocate M Augustine instructed by Routledge Modise Inc.
For the First to Fifth Respondents:	Advocate G Malindi SC, Advocate T Machaba and Advocate J Bleazard instructed by Mchunu Attorneys.