# THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 12 April 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Minister of Transport and Public Works: Western Cape and Others v Thozama Angela Adonisi and Others (522& 523/2021) [2024] ZASCA 47 (12 April 2024)*

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Today the Supreme Court of Appeal (SCA) upheld an appeal brought by the Western Cape Provincial Minister of Transport and Public Works and the City of Cape Town, against an order granted by the Western Cape Division of the High Court, Cape Town, in terms of which the Provincial government of the Western Cape together with the City of Cape Town were ordered to comply with their obligations under sections 25 and 26 of the Constitution, together with their obligations under the Housing Act, 107 of 1997 and the Social Housing Act 16 of 2008. They were given until 31 May 2021 to file, with the court, a comprehensive report on the progress made in complying with the order. In a related application, heard by the same court, a contract of sale in terms of which the Province sold an immovable property comprising Erven 1675 and 1424 Sea Point, Cape Town to the Phyllis Jowell Jewish Day School, was set aside by the court. In that application the court also granted an order declaring that the failure by the Province to inform and consult with the National Government, represented by the Minister of the Department Human Settlements, of its intention to dispose of the property.

The first application was brought by Ms Angela Adonisi, together with three other applicants who were members of Reclaim the City, a voluntary social movement made up of about 3000 members from Cape Town. Ndifuna Ukwazi Trust was also one of the applicants. In their application they argued that when the decision to sell the property was made, the Province and the City failed to consider the constitutional obligations to enable black and coloured working class residents of Cape Town to access housing within the CBD of the City, and to consider their right to access land on equitable basis. More specifically, they maintained that when the property became ‘available’, the Provincial Government, as the entity charged with the responsibility of re-engineering the spatial inequality in the Province and the City, should have taken the opportunity to provide affordable housing on the property. Their case was that the

implementation of the City's policy of urban regeneration was skewed and resulted in rental properties that had been occupied by the poor and working class people being sold to property developers who converted them into residential accommodation which was unaffordable to the poor and low income earners. They alleged that, when selling the property, the Province prioritised financial considerations over their constitutional and statutory obligations.

In the second application, the National Minister of Human Settlements argued that the Province had an obligation to inform and consult with her before selling the property. She declared a dispute with the Province and the City and insisted that the matter be referred to an intergovernmental dispute resolution forum.

The high court agreed with both sets of applicants and granted the orders sought. In addition to finding that the Province and the City had failed to meet their constitutional and statutory obligations, it found that the Province had acted in bad faith in not approaching the National Minister of Human Settlements, to ascertain whether Sea Point had been designated as a restructuring zone, such that restructuring capital grant funding could be accessed for development of social housing on the Tafelberg Property. The high court also found that the Province had an obligation under the Constitution and the Intergovernmental Relations Framework Act 13 of 2005 to inform and consult with the National Minister on the proposed disposition of the Tafelberg property.

The Supreme court of appeal overturned the judgment of the high court. It found that it was improper for Reclaim the City and Ndifuna Ukwazi applicants to rely directly on the Constitution in asserting their constitutional rights. Under the principle of constitutional subsidiarity they had to rely on the Housing Act and the Social Housing Act, as those are the statues enacted to give effect to the asserted constitutional rights. The Supreme Court of Appeal highlighted that the applicants had not relied on any specific provisions of the two pieces of legislation – they only contended, in general terms that they had rights under the Acts. Furthermore, the applicants did not make out a proper case for their claim that the Province and the City had an obligation to provide social housing at a specific legislation – in Central Cape Town. The court considered that there was evidence that the Pipeline programme in terms of which social housing projects were underway. That programme had yielded more than two thousand social housing units in the City. In addition 20 % of a development on the Helen Bowden Nurses Home Site, close to the V & A Waterfront was reserved for social housing. Furthermore, social housing would be provided on the Woodstock Hospital Site. In relation to the same allegations, by the National Minister of Human Settlements, that the Province and the City had failed to provide social housing, the Supreme Court of Appeal also considered that the National Department of Human Settlement had, until 2013, recognised the Province more than once as the leader in provision of Social Housing amongst other provinces in the Country.

The Supreme Court of appeal also found that on a proper interpretation of the proclamation on which the National Minister relied in asserting that Sea Point was a restructuring zone, neither the text, context nor the purpose of the proclamation supported the interpretation advanced by the Minister. Further,

there was no support in the evidence provided for the allegation that the Province had an obligation to inform and consult the National Minister of its intention to dispose of provincial government land.

The Supreme Court of Appeals reversed the order of the high court in terms of which the regulations governing the notice and comment procedure were set aside as unconstitutional. The regulations were issued in terms of the Western Cape Land Administration Act. The SCA found that the conclusion of a proposed sale under the regulations, read with the provisions of s 3 of the WCLAA provided for a cost effective, comprehensive and transparent process in which interested parties are presented with comprehensive details of the proposed transaction. For these reasons the appeal was upheld.

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