

Does Expropriation Extinguish a Municipality's Duty to Relocate Occupiers Under a Court Order?

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INTRODUCTION

The Supreme Court of Appeal (“**SCA**”), in the *City of Tshwane Metropolitan Municipality and Another v Summer Season Trading 63 (Pty) Ltd*¹ judgment, recently considered whether the City of Tshwane Metropolitan Municipality (“**the City**”) could expropriate privately owned land after a final eviction order had already been granted against unlawful occupiers living on the property. The Court held that the City could not use expropriation to avoid its obligation to relocate the occupiers as required by an existing court order. The judgment highlights the limits of municipal expropriation powers, the protection of property rights, and the importance of complying with court orders.

THE BACKGROUND

The dispute dates back to 2003 when people began settling on a vacant property near Bronkhorstspuit. Despite an existing court order aimed at preventing occupation of the land, the number of occupiers continued to grow, eventually forming an informal settlement known as Kanana Village. In 2006, Summer Season Trading 63 (Pty) Ltd (“**Summer Season**”) purchased the property. The company attempted to engage with the municipality to find a solution, but the situation remained unresolved, which resulted in Summer Season launching eviction proceedings.

On 30 April 2013, the High Court per Muller AJ found that the occupiers were unlawfully occupying the property and granted an eviction order (“**the 2013 eviction order**”). Importantly, the court also ordered the City of Tshwane to provide alternative accommodation and relocate the occupiers. The High Court further found that, in the circumstances, the occupiers’ interests could not outweigh the property rights of the owner and concluded that an eviction order was just and equitable.

The City and the occupiers sought leave to appeal the eviction order, which was refused. The City and the occupiers challenged the eviction order all the way to the Supreme Court of Appeal and the Constitutional

Court; however, neither court was persuaded that there were reasonable prospects of success or compelling reasons to interfere with the High Court’s judgment, and leave to appeal was accordingly refused. As a result, the 2013 eviction order became final and enforceable.

THE EXPROPRIATION PROCEEDINGS

Rather than relocating the occupiers as ordered by the High Court, the City sought to expropriate the property. It relied upon section 79(24)(a)(i) of the Local Government Ordinance, 1939 (**the Ordinance**), read with section 5 of the Expropriation Act 63 of 1975 (**the Expropriation Act**). It stated that the expropriation was for a public purpose. It invited Summer Season to make representations regarding the intended expropriation. Summer Season made representations on 4 June 2014, objecting to the intended expropriation on several grounds.

The City issued an expropriation notice on **10 March 2015**, claiming that it wanted the land for public purposes. In response to the notice, Summer Season launched its review application at the High Court under case number 22557/2015. This review application is the subject of the present appeal. On **29 October 2018**, the City delivered two documents to Summer Season. The first document informed Summer Season that the City was withdrawing the 2015 expropriation notice in terms of section 23(1) of the Expropriation Act. The second was a new notice of expropriation, informing Summer Season that the property was expropriated with immediate effect (“**the 2018 expropriation notice**”). Summer Season challenged both notices in court.

THE REVIEW PROCEEDINGS - IN THE HIGH COURT

Summer Season’s grounds of review in the High Court were *inter alia* that:

- (a) Section 79(24)(a)(i) of the Ordinance read with section 5 of the Expropriation Act was not a lawful basis for the expropriation since those provisions do not confer the power to expropriate property.

It contended that section 9(3) of the Housing Act 107 of 1997 (**the Housing Act**) is the only statute which would permit the City to expropriate the property for the purpose stated in the notice of expropriation. No reliance was placed on the Housing Act;

(b) The City's Council had not resolved to expropriate the property; and

(c) The expropriation was carried out for an ulterior motive and purpose, was arbitrary and capricious, contravened the rule of law, and was intended to avoid the court order evicting the occupiers from the property.

In the review proceedings, the occupiers instituted a conditional counterclaim seeking relief under section 172(1)(b) of the Constitution. They requested that the Court grant an order permitting them to remain on the property. Alternatively, they sought an order directing the City to recommence the expropriation process and to ensure full compliance with all applicable constitutional and statutory requirements governing expropriation.

On **31 October 2023**, the High Court ruled in favour of Summer Season, setting aside the 2015 expropriation notice and declaring the 2018 expropriation notice invalid. The Court also dismissed the occupiers' counterclaim and reaffirmed the existing 2013 eviction order. To give effect to the eviction, the City was directed to relocate the occupiers to municipal land on Farm 370 Donkerhoek JR and to complete the relocation process by **30 October 2024**. Aggrieved by the Court's decision, the City and the occupiers appealed the decision of the court.

THE ISSUES BEFORE THE SUPREME COURT OF APPEAL

The key issues for consideration before the SCA were as follows:

(a) Whether the 2018 expropriation notice constitutes a valid and lawful exercise of the City's power to expropriate land.

(b) If so, whether the expropriation is permitted in light of the extant order evicting the occupiers and requiring their relocation.

(c) If not, whether a just and equitable remedy is available to the occupiers to permit them to remain on the property.

The Court began by considering the legislative framework governing expropriation by municipalities. The constitutional validity of any expropriation is assessed against the requirements of section 25 of the Constitution.

Section 25 of the Constitution protects property rights. It provides that no one may be deprived of property except in terms of a law of general application, and that property may only be expropriated "for a public purpose or in the public interest" and subject to compensation.

The Court then considered Section 5 of the Expropriation Act, which is presently relevant, deals with expropriation at the instance of a local authority. Section 5 of the Expropriation Act provides that if a local authority has the power to expropriate property, it may only exercise that power in accordance with the procedures set out in the Act.

The SCA explained that when a local authority exercises a power of expropriation, it must comply with the procedural requirements set out in the Expropriation Act. Section 7 of the Expropriation Act requires that, once a decision to expropriate has been made, the owner must be served with a formal notice of expropriation.

The Court further noted that, once a notice of expropriation has been issued, the withdrawal of the expropriation is governed by section 23 of the Expropriation Act. The provision limits the circumstances in which an expropriation may be withdrawn. After three months from the date of expropriation, withdrawal is only permitted with the written consent of the property owner.

In support of its authority to expropriate the property, the City relied on section 79(24) of the Local Government Ordinance. Section 79(24) of the Local Government Ordinance empowers a municipal council to acquire property — including by expropriation — for the performance of any function it is authorised or required to perform under any law.

The Court also considered the provisions of the Housing Act, which imposes obligations on municipalities to take reasonable steps to ensure access to adequate housing and the provision of essential municipal services. Section 9(1) of the Housing Act requires municipalities to take reasonable steps to ensure that inhabitants have access to adequate housing, that conditions harmful to health and safety are prevented or removed, and that essential services such as water, sanitation, and electricity are provided efficiently.

Importantly, the Housing Act specifically empowers municipalities to expropriate land for housing development, provided certain requirements are met:

(a) the municipality is unable to purchase the land on reasonable terms through negotiation;

(b) it has obtained prior approval from the MEC (the relevant provincial official); and

(c) the notice of expropriation is published in the Provincial Gazette within six months of that approval.

Against this legislative backdrop, the Court was required to determine whether the City had complied with the applicable statutory requirements and whether it possessed the necessary authority to expropriate the property for the purpose it claimed.

THE CITY'S SUBMISSIONS BEFORE THE SCA

The City initially argued that the High Court erred when it found that its expropriation of the property was unlawful. It maintained that it had the necessary legal authority to expropriate the land and that it was not required to comply with the provisions of the Housing Act relied upon by the High Court.

However, during the appeal, the City ultimately conceded that both the 2015 and 2018 expropriation notices were legally defective and could not be upheld. The City's main argument then shifted to the eviction order. It contended that the High Court should not have enforced the eviction without obtaining updated information about the occupiers and the current circumstances within the settlement. According to the City, the community had developed into a well-established village with homes, schools, businesses, a clinic, and places of worship. The City therefore asked that the matter be sent back to the High Court for further investigation before any relocation could take place.

OCCUPIERS' SUBMISSIONS BEFORE THE SCA

The occupiers conceded that the City's expropriation attempts were procedurally defective but argued that they were nevertheless entitled to just and equitable relief. They submitted that, having lived on the property for nearly 20 years and established a settled community there, the Court should either permit them to remain on the land or direct the City to initiate a fresh and lawful expropriation process. They further contended that their rights to housing, dignity, and security of tenure outweighed the owner's property rights and that expropriation, with compensation to the owner, would be the most equitable outcome.

SUMMER SEASON'S SUBMISSIONS BEFORE THE SCA

Summer Season argued that the High Court's decision was correct and should be upheld because there is no merit to the City's appeal. It maintained that the City had failed to comply with the legal requirements governing expropriation and that both expropriation notices were therefore invalid. Summer Season also opposed the relief sought by the occupiers, contending that their counterclaim had been correctly dismissed by the High Court and that there was no legal basis for allowing them to remain on the property given the existing eviction order.

THE SCA'S FINDINGS

The SCA upheld the High Court's decision and dismissed the appeal. It found that the City's withdrawal of the 2015 expropriation notice was unlawful because it occurred outside the statutory three-month period and without the written consent of the property owner, as required by the Expropriation Act. As a result, the withdrawal was a nullity and could not serve as the basis for any subsequent expropriation.

The Court further held that both the 2015 and 2018 expropriation notices were invalid. While the City ultimately conceded this point, the Court considered it necessary to address the broader legal issues surrounding the expropriations. It found that neither the Expropriation Act nor the Local Government Ordinance independently authorised the City to expropriate land for the purpose of establishing a permanent housing settlement. The City's powers in relation to housing were governed by the Housing Act, which specifically regulates expropriations for housing development and requires, among other things, prior approval from the relevant MEC. The City failed to comply with these requirements.

Importantly, the Court found that the true purpose of the expropriation was to prevent the relocation of the occupiers and to allow them to remain on the property despite the existing eviction order. This constituted an improper use of the expropriation power. The Court emphasised that a statutory power may only be exercised for the purpose for which it was granted and cannot be used to circumvent a valid court order.

The Court also rejected the occupiers' request for just and equitable relief under section 172(1)(b) of the Constitution. It held that granting an order allowing the occupiers to remain on the property would effectively undermine and render meaningless the eviction order that had already become final after all appeals had been exhausted. The Court further held that the occupiers could not compel the City to expropriate the property or restart the expropriation process.

A central theme of the judgment was the rule of law and the binding nature of court orders. The Court strongly criticised the City for failing to comply with the 2013 eviction and relocation orders, describing its conduct as a breach of its constitutional obligations. It stressed that organs of state are bound by court orders in the same way as private citizens and that judicial authority depends upon compliance with court decisions. Court orders remain binding until they are lawfully set aside through a recognised legal process.

The Court also rejected the argument that the matter should be sent back to the High Court for further investigation into the circumstances of the occupiers. It held that the question of whether eviction was just and

equitable had already been determined in the 2013 eviction proceedings. That determination had been confirmed through the appeal process and was therefore final and binding. While acknowledging the difficult circumstances faced by the occupiers and the broader housing crisis in South Africa, the Court emphasised that the right of access to housing does not entitle unlawful occupiers to choose where they wish to live indefinitely or to remain permanently on privately owned land.

In reaching its decision, the Court relied on *Kungwini Local Municipality v Puntlyf 520 Investments (Pty) Ltd*² and *Grobler v Msimanga*³. The Court noted that the stated purpose of the expropriation was to prevent the relocation of the occupiers in the face of an existing eviction order. Referring to *Kungwini*, where a municipality unsuccessfully sought to expropriate land to assist unlawful occupiers facing eviction, the Court reiterated that the power to expropriate may only be exercised for the purpose for which it was conferred. The Court further drew support from *Grobler*, in which it was held that an expropriation undertaken for a purpose not contemplated by the empowering legislation cannot be upheld. Applying these principles, the Court concluded that the City's attempt to expropriate the property in order to thwart the implementation of the eviction order was unlawful.

In relation to the relocation order, the Court held that the High Court had correctly required the City to comply with its existing relocation obligations. However, it found that the High Court had gone too far by specifying the particular property to which the occupiers had to be relocated, as that issue had not been before the court. The only relevant question was whether suitable alternative land had been identified. The Court therefore amended the High Court's order by deleting the provisions directing relocation to a specific property. It also extended the relocation deadline, ordering that the City complete the relocation within one year of the Supreme Court of Appeal's judgment.

CONCLUSION

In conclusion, the judgment reaffirms several fundamental constitutional and administrative law principles. It underscores that the power of expropriation must be exercised in terms of the appropriate legislative framework and only for a lawful purpose. It further confirms that municipalities may not invoke expropriation powers to circumvent or frustrate the enforcement of valid court orders, and that final judicial decisions are binding on all parties, including organs of state. The judgment also highlights the careful balance that must be maintained between the constitutional protection of property rights and the state's obligation to address housing needs. While acknowledging the difficult circumstances faced by the occupiers and the importance of access to adequate housing, the Court

made it clear that these considerations cannot justify unlawful state action or the disregard of existing court orders. Ultimately, the decision serves as a reminder that, in a constitutional democracy founded on the rule of law, the pursuit of legitimate social objectives must occur within the bounds of legal authority.

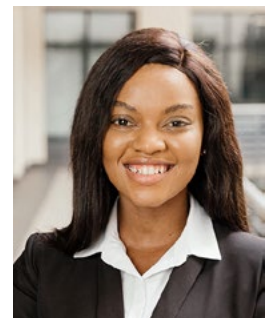
1 *City of Tshwane Metropolitan Municipality and Another v Summer Season Trading 63 (Pty) Ltd* (988/2024 and 831/2024) [2026] ZASCA 81 (29 May 2026).

2 *Kungwini Local Municipality v Puntlyf 520 Investments (Pty) Ltd* [2007] ZALCC 12 (14 September 2007) para 20 – 22.

3 *Grobler v Msimanga* [2008] 3 All SA 549 (W); 2008 JDR 0273 (W) para 125. See also *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v L F Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C) at 268A.



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