

LAND REFORM

Constitutional Court considers evictions in the inner-city of Cape Town

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On 27 February 2024, the Constitutional Court heard oral arguments in the matter of *Charnell Commando and Others v City of Cape Town and Another* (Abahlali baseMjondolo as *Amicus Curiae*) (Constitutional Court Case No.: 49/2023) ("**Commando**"). The *Commando* matter concerns the impending eviction of some 15 Coloured persons (the "**Bromwell Families**") who, together with their dependants, reside at Erf 10626, Bromwell Street, Woodstock ("**the Property**") and more specifically, the question of where the Bromwell Families should be relocated to following their eviction. At the time of the drafting of this submission, the Constitutional Court had not yet handed down its judgment in this matter.

The Applicants contend that the *Commando* matter must be considered in light of the ongoing gentrification of areas such as Salt River and Woodstock, which are one of the few inner-city neighbourhoods in which Coloured households managed to survive forced evictions such as those in District Six, which saw 60 000 people ejected from the inner city. Consequently, the Bromwell Families argue that it would be unreasonable for them to be relocated to the outskirts of the City.

The *Commando* matter has been ongoing for more than 8 years. On 6 September 2021, while the COVID-19 pandemic was still underway, the Western Cape High Court granted an order ("**the WCHC Judgement**") declaring the City of Cape Town's ("**City**") implementation of its emergency housing policy unconstitutional and directing the City to provide the Bromwell Families with temporary emergency accommodation ("**TEA**") in Woodstock, Salt River or the Inner-City Precinct, and to report back to the Court on the relocation of the Bromwell Families and the specific property to which they would be relocated.

The City subsequently appealed to the Supreme Court of Appeal ("**SCA**"), which overturned the WCHC Judgment and upheld the City's appeal. The SCA set aside the WCHC's finding of unconstitutionality regarding the City's emergency housing policy and the WCHC's directive ordering the City to provide the Bromwell Families with TEA in Woodstock, Salt River or the Inner-City Precinct, but ordered the City to provide TEA in a location "as near as possible" to the Property. Following the SCA Judgment, the Bromwell Families appealed to the Constitutional Court. This matter has generated enormous public interest and raises questions about the reasonableness of the City's policy of not providing any TEA in the inner city and the importance of the location of TEA provided by a municipality in relation to the considerations of justice and equity mandated by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("**PIE**"), which is South Africa's principal law applicable to evictions.

The South African Constitution mandates the State to take reasonable measures to progressively realise the right of all South Africans to access to housing. The Constitutional Court has, through a series of landmark cases, interpreted and given substance to the meaning and justiciability of this right. The *Commando* matter will no doubt be followed very closely by all stakeholders with an interest in land reform, housing, spatial planning and evictions in South Africa. This matter has the potential to become a critical part of the future South African jurisprudence on evictions, spatial transformation, and the importance of the location of a specific TEA in relation to its reasonableness.



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