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LAND REFORM

The rule of law remains paramount: Lessons from City of Tshwane Metropolitan Municipality v Summer Season Trading 63 (Pty) Ltd

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The dispute in *Summer Season Trading 63 (Pty) Ltd v The City of Tshwane Metropolitan Municipality* 2021 JDR 0291 (GP) ("**the *Summer season* case**") arose after hundreds of unlawful occupiers settled on land owned by Summer Season Trading 63 (Pty) Ltd. Following protracted litigation, the landowner secured an eviction order, while the City of Tshwane was directed to provide alternative accommodation to the occupiers. Rather than implementing the eviction and relocation process, the City purported to take the extreme step of expropriating the property, contending that the acquisition was necessary to facilitate access to housing for the occupiers.

The landowner challenged the validity of the expropriation, arguing that the City lacked the requisite statutory authority to do so, and was attempting to circumvent its obligations under the eviction order. The Supreme Court of Appeal ("**the SCA**") was thus called upon to determine whether the expropriation was lawfully authorised and constitutionally permissible. The SCA upheld the challenge, finding that the City lacked lawful authority to expropriate the property for the stated purpose and that the expropriation amounted, in substance, to an impermissible

attempt to avoid compliance with the existing eviction and relocation orders. The case accordingly raised important questions concerning the limits of municipal expropriation powers, the protection of property rights, and the operation of the principle of legality.

Reaffirmation of property rights

The SCA's decision in the *Summer season case* constitutes a clear reaffirmation that the right not to be arbitrarily deprived of property in South Africa remains firmly protected under the Constitution and cannot be replaced by administrative expediency. The emphasis brought by this case is that expropriation is a narrowly circumscribed power that must be exercised strictly within a valid legislative framework. By invalidating the City's attempted expropriation, it effectively confirmed that municipalities may not rely on broad, implied, or expedient powers, nor invoke generalised social hardship, to justify interference with private ownership outside the confines of statute and the Constitution.

For landowners, the decision provides important certainty, where they act lawfully particularly by complying with proper eviction procedures, the courts will provide substantive protection. Property cannot be arbitrarily sacrificed to address systemic housing challenges, and any deprivation must meet both the source of power and lawful purpose requirements embedded in section 25 of the Constitution of the Republic of South Africa, 1996 ("the **Constitution**").

Limits on expropriation

The judgment reinforces the Court's rejection of loosely constructed expropriation powers. The Court held that the City could not rely solely on the Local Government Ordinance, 1939 and the Expropriation Act 63 of 1975, as these did not confer substantive authority to expropriate land for housing purposes. Instead, the Housing Act 107 of 1997 together with its jurisdictional safeguards constituted the appropriate legislative vehicle. This underscores that expropriation is not merely a matter of asserting a public purpose, but of demonstrating clear statutory authority and strict compliance with the relevant enabling framework.

The Court further interrogated the true purpose underlying the expropriation and found that it was aimed at circumventing an existing eviction order and avoiding relocation obligations. Such use of expropriation was held to be impermissible. For landowners, this confirms that courts will scrutinise not only the formal legality of the process but also whether the power is exercised for its proper statutory purpose, rather than for ulterior or tactical ends.

Eviction orders and the rule of law

The judgment is particularly significant in its robust defence of the rule of law and the binding effect of court orders. The Court rejected the City's attempt to deploy expropriation as a means of neutralising a final eviction order, emphasising that administrative action cannot trump judicial determinations. In doing so, the court reinforced the principle that court orders are binding and must be complied with unless and until they are lawfully set aside.

For landowners, this constitutes a critical safeguard. Once an eviction order has been properly obtained and upheld in the landowner's favour, it cannot be indirectly undone through any subsequent state action. The decision further underscores that municipalities bear enforceable obligations to provide alternative accommodation and to effect relocations in accordance with court orders, rather than shifting that burden onto private landowners.

Housing rights and ownership

Importantly, the Court did not disregard the realities of South Africa's housing crisis. It acknowledged that occupiers had established long-standing communities, with homes, livelihoods, and social networks rooted in the land. However, it drew a principled distinction between the State's constitutional obligation to provide access to housing and the rights of private landowners. The primary responsibility to address homelessness rests with the State, not with individuals whose land has been unlawfully occupied.

The Court reaffirmed that section 26 of the Constitution does not entitle occupiers to remain indefinitely on privately owned land of their choosing. While eviction must always be just and equitable, ownership rights are not extinguished by prolonged unlawful occupation. This preserves the constitutional balance, and socio-economic rights are safeguarded, but not at the cost of undermining property rights or the rule of law. The Court has emphatically reaffirmed the strength and scope of the right of ownership, illustrating that it remains a powerful and enduring legal entitlement.

The central role of compliance with all statutory obligations

The strength of the *Summer Season* judgment lies in its protection of ownership where the landowner has acted lawfully. However, this must be considered alongside recent jurisprudence from the Land Court, which illustrates the converse principle. In several instances, the Land Court has declined to grant eviction orders in favour of landowners or mining right holders, despite extensive relocation efforts, where those parties have failed to comply with statutory requirements under Interim Protection of Informal Land Rights Act 31 of 1996 ("**IPILRA**") and the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**"). This includes failures to obtain the requisite community consent and to exhaust applicable dispute resolution mechanisms.

This theme finds clearer expression in the critical Constitutional Court judgment of *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another* 2019 (2) SA 1 (CC) ("the **Maledu case**"), where the Court reaffirmed that strict compliance with statutory safeguards is a prerequisite for the granting of eviction orders in favour of landowners. The judgment further highlights the protection afforded to informal land rights where such rights are implicated. The underlying principle is that, for our Courts, compliance, rather than ownership alone, is a decisive factor in property disputes. While the *Summer Season* case protects landowners against unlawful state interference, the *Maledu* case in contrast protects occupiers where landowners or mining right holders fail to adhere to the applicable governing legislative framework.

Cumulatively, these cases denote a coherent and principled approach that, South African courts remain committed to protecting landowners from arbitrary deprivation of their property and will not permit arbitrary expropriation or the indefinite unlawful occupation of private land. However, that protection is not automatic; it is contingent upon strict compliance with the applicable legal framework, whether under the Restitution of Land Rights Act 22 of 1994 ("**the Restitution Act**"), Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("**PIE**"), Extension of Security of Tenure Act 62 of 1997 ("**ESTA**"), IPILRA, the MPRDA, or any expropriation legislation.

The *Summer Season* case demonstrates that courts will robustly uphold ownership where the landowner has acted lawfully and the State has failed to do so. By contrast, emerging jurisprudence out of the Land Court illustrates that even strong proprietary or commercial interests may falter where statutory safeguards are disregarded. The emerging position is therefore clear that ownership remains strongly protected in South African law, but its enforcement is not absolute, regard being had to substantive adherence to legality, procedure, and constitutional norms.

On one hand, the judgment may attract criticism for potentially constraining municipalities' or, more broadly, the State's flexibility in responding to urgent housing crises, raising questions as to how local government can practically reconcile its constitutional housing obligations with strict legality requirements. On another hand, it may be argued that the State is by no means precluded or constrained from responding decisively to housing challenges or from exercising its full range of powers to provide access to housing. The cases embody the fact that responses to modern urban homelessness and the demand for minerals in rural areas, must occur within the bounds of the law. Compliance with statutory and regulatory requirements cannot be overlooked in the name of expediency; it is foundational.



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