

## Case review

# Fundamental constitutional value of accountability requires municipal officials to obey court orders

*City of Johannesburg Metropolitan Municipality v Hlophe* (1035/2013) [2015] ZASCA 16 (18 March 2015)

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### Introduction

*This is a summary of a recent Supreme Court of Appeal (SCA) decision that elaborated on the fundamental Constitutional value of accountability of public officials.*

The Chung Hua Mansions are situated on Jeppe Street in the centre of Johannesburg. Changing Tides Properties Ltd. as the registered owner of the Chung Hua Mansions obtained an eviction order for the occupiers of the property. The property, which was previously used as an office block, had become a shelter for poor and homeless people. After acquiring the property Changing Tide intended to renovate and upgrade it. It sought an eviction order from the South Gauteng High Court on 26 May 2011.

An order was made by agreement between Changing Tides, the occupiers and the City of Johannesburg Metropolitan Municipality (the City). The order directed the City:

- (i) to consider the eligibility of the occupiers for the provision of alternative accommodation in terms of its temporary/emergency housing programme; and
- (ii) to file a report by no later than 30 April 2012 inter alia setting out which of the occupiers were eligible for temporary/emergency accommodation; what accommodation would be provided to the occupiers who qualified; and when such accommodation would be provided.

The City repeatedly failed to comply with any of these provisions of the order, nor did it explain its failure to do so.

### The issue to be determined by the Supreme Court of Appeal

The essential question to be determined by the SCA was whether an order obliging the functionaries to ensure compliance by the City was justified.

### The background

Changing Tides re-enrolled the eviction application for 14 June 2012, when it came before Judge Claassen. After hearing counsel for Changing Tides, the occupiers and the

City, Judge Claassen issued an eviction order that required the occupiers to vacate the property by 15 February 2013, failing which the sheriff was authorised to evict them. Further the City was directed to

1. provide the occupiers with temporary shelter by no later than 30 January 2013, if they were still resident on the property; and
2. file a report by no later than 31 October 2012, setting out the nature and location of the temporary shelter to be provided to the occupiers.

The order was no doubt informed by the decision of the Constitutional Court in *Blue Moonlight Properties* handed down on 1 December 2011.

By 20 November 2012, the City had not complied with the obligation to provide temporary shelter to the occupiers, and it stated in its report that this was due to 'the lack of availability of buildings and financial and other resources' (para 6).

With the threat of eviction imminent, the occupiers launched an enforcement application on 19 December 2012 claiming that

the City and the functionaries are obliged to take all the steps necessary to ensure that the City complies with the order of Claassen J, by providing the occupiers with temporary shelter and a mandatory order obliging the functionaries to give effect to the contents of the declarator (para 7, 8).

On 3 May 2013 Judge Satchwell granted the relief claimed in the enforcement application. She further declared that the City and its functionaries (that is, the Executive Mayor, Municipal Manager and Director of Housing of the City of Johannesburg Metropolitan Municipality) were 'constitutionally and statutorily obliged to take all the necessary steps to ensure that the City complies with the court order' as granted in case no. 2011/20127 (by Judge Claassen on 14 June 2012 ("the June 2012 court order") and the court order granted by Judge Lamont J on 6 February 2013,

obliging the City to provide the applicants with temporary shelter where they may live secure against eviction, in a location as near as feasibly possible to 191 Jeppe Street, Johannesburg.

### Constitutional and statutory obligation of City functionaries

The SCA affirmed that City functionaries are statutorily obliged to see to the implementation of the orders made against the City. As such the decisions of Judge Claassen and Judge Lamont recognized that the functionaries as the officials of the City were responsible for implementation of the court orders. Section 56 of the Local Govern-

ment: Municipal Structures Act 117 of 1998 (the Structures Act) elaborates on the functions and powers of an executive mayor of a municipality, as being responsible for the overall planning and oversight of the service delivery of the municipality. Section 55 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) provides that the municipal manager is the head of administration and the accounting officer of a municipality. In terms of section 59 of the Systems Act, the director of housing of the City has the specific responsibility for implementing the housing programmes and projects in the City's area of jurisdiction.

The SCA in this occasion (para 17) relied on MEC for the *Department of Welfare v Kate* where Acting Judge Nugent clearly stated (para 30) that 'It goes without saying that a public functionary who fails to fulfil an obligation that is imposed upon him or her by law is open to proceedings for a mandamus compelling him or her to do so. That remedy lies against the functionary upon whom the statute imposes the obligation, and not against the provincial government.'

### The principle of public accountability

In deciding this matter, the SCA relied on the principle of public accountability (para 25). It is acknowledged that it is a founding value of the Constitution and central to our constitutional culture. In terms of s 152(1)(a) of the Constitution the objects of local government include to provide an accountable government for local communities. Section 195(1)(f) of the Constitution specifically states that public administration must be accountable. In terms of s 6(2)(b) of the Systems Act the administration of a municipality must facilitate a culture of public service and accountability among its staff. Further, section 6(1) of the Systems Act provides that the municipality's administration is governed by the democratic values and principles embodied in s 195(1) of the Constitution.

The SCA further reaffirmed that Constitutional accountability may be appropriately secured through the variety of orders that the courts are capable of making, including a *mandamus* (para 25).

### The reporting order

Before Judge Satchwell, the nature and location of the temporary shelter to be provided to the occupiers remained at issue between the City, the occupiers and Changing Tides. Although the City had at all times accepted that it was obliged to provide the occupiers with temporary shelter, it had consistently failed to do so. The reporting order was intended to give directions to the City in respect of what it is required to do to comply with its constitutional obligations to provide temporary accommodation to homeless persons in general (para 28).

### Conclusion

The appeal succeeded and the SCA found that the fundamental constitutional value of accountability requires municipal officials to see to it that the municipalities they control obey court orders. This implies that Municipal office-bearers are obliged to give effect to court orders and constitutional obligations placed on municipalities.

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### References

*City of Johannesburg Metropolitan Municipality v Hlophe* (1035/2013) [2015] ZASCA 16

*City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another, (2)* BCLR 150 (CC)

*MEC for the Department of Welfare v Kate* (580/04) [2006] ZASCA 49; 2006 (4) SA 478 (SCA); [2006] 2 All SA 455 (SCA) (30 March 2006)