



From the **COURTS**

When are evictions just and equitable?

Before an eviction order can be granted a court needs to determine whether it is just and equitable to do so in terms of section 26 of the Constitution by considering all the circumstances of each case, including the rights and needs of the elderly, children, disabled persons and households headed by women.

Facts

The City of Cape Town applied to court for an eviction order in terms of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (PIE) to evict everyone but three families occupying 105 houses and 38 serviced erven in the Capricorn Vrygrond area. The site in question was formerly an informal settlement that the City developed into a low-cost housing township, where development took place in terms of the National Housing Subsidy Scheme. However, before finalisation of the allocation process some residents in the area occupied the houses without permission, prompting the City's application for their eviction.

Issue

The issue before the Court in *City of Cape Town v Persons Who are Presently Unlawfully Occupying Erf 1800, Capricorn: Vrygrond Development* 2003 (8)BCLR 878 (C) was whether an eviction order was just and equitable considering all the circumstances of the case including the rights and needs of the elderly, children, disabled persons and households headed by women.

key points

The City based its case on PIE, as both the owner and the entity in charge of the property. The City argued that the respondents were unlawful occupiers, as they had no permission to occupy the houses.

The respondents argued that after the first phase of development was completed, unidentified people started to move into the houses. When the development of Vrygrond was approved, people living in the area were moved to adjacent property, though it had been agreed that houses would first be allocated to those who already lived there. A list of these people was compiled in 1998.

Before ownership could be transferred, potential beneficiaries had to meet two requirements. First, they had to be on the list compiled in 1998. Second, they had to qualify for a housing subsidy in terms of the National Housing Code. It was further agreed that the people who were on the list but not eligible for a subsidy would be entitled to one of the 38 serviced erven.

The City argued it has a strict procedure in terms of which beneficiaries could obtain ownership, with which the majority of the applicants had not complied. In terms of this procedure, once a beneficiary is identified they are notified and asked to sign a first delivery certificate. They then have to complete a snaglist of all problems in the house, to which the City contractors will attend. Only then is the property transferred to the beneficiary.

However, only three beneficiaries had complied with this procedure.

In deciding the matter the Court referred to the *Grootboom* judgment and the right to have access to adequate housing. The Constitutional Court in *Grootboom* scrutinised the City's housing development policy and found it to be reasonable in terms of section 26 of the Constitution. Although the Court in the *Capricorn Vrygrond* case had sympathy for the enormous task at hand in implementing the City's housing development policy, the five years that had elapsed since the

- Eviction orders will only be granted when it is just and equitable to do so.
- The needs of the elderly, children, the disabled and households headed by women will be evaluated differently from other people's needs in an eviction order.
- Courts do not condone self-help invasions.

list was compiled was an unacceptably long delay. What weighed in the City's favour was that the Court in *Grootboom* held that self-help land invasions could not be condoned.

The Court in the *Capricorn Vrygrond* case held that what was just and equitable would differ from one person to another and divided the affected people into four groups:

- those on the list whose subsidies had been approved and who had been allocated houses;
- those on the list whose subsidies had been approved, who had not been allocated houses but were occupying houses or serviced erven;
- those on the list whose subsidies had not been approved but who were occupying houses or serviced erven;
- those who were not on the list.

The Court held that those in the first group had done everything they were supposed to do except signing a first delivery certificate and completing a snaglist. As only the formalities were outstanding it would not be just or equitable to evict them.

In relation to the second group, the Court held that they also qualified for housing and evicting them would not be just or equitable.

With regard to the third group only woman-headed households, people who were disabled or the elderly could not be evicted. However, if they did not fall into above categories, it was

just and equitable to evict them.

The Court in the *Capricorn Vrygrond* case held that what was just and equitable would differ from one person to another.

The City was ordered to assist these people to get their subsidies approved; those whose subsidies were not approved should be evicted. The Court granted an order evicting the last group from the property.

Comments

The Court clearly enforced the *Grootboom* decision that land invasions had to be rejected as an appropriate way to enforce the constitutional right to access to adequate housing. This was even so where the delivery was slow. However, municipalities should ensure that evictions are just and

equitable before considering evicting people. It is clear from the decision that the needs and rights of the elderly, children, disabled persons and households headed by women fall in a special category as far as evictions is concerned, and this category enjoys special protection.

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