

SUMMARY OF THE CONSTITUTIONAL COURT JUDGEMENT  
HANDED DOWN ON 10 JUNE 2009 IN THE MATTER BETWEEN  
THE RESIDENTS OF JOE SLOVO COMMUNITY VERSUS  
THUBELISHA HOMES, MINISTER FOR HOUSING AND MINISTER  
OF LOCAL GOVERNMENT AND HOUSING, WESTERN CAPE

INTRODUCTION

1. On the 10<sup>th</sup> June 2009 the Constitutional Court ("the Court") handed down judgement in respect of the appeal which had been noted by the Residents of Joe Slovo informal settlement ("the residents") against the judgement of the Western Cape High Court ("the High Court Judgement") which had granted an order for their relocation to temporary resettlement areas ("the TRAs") situated in Delft and in such other areas as may be necessary.
2. The High Court Judgement was granted after Thubelisha Homes, The Minister of Housing and the Minister of Local Government and Housing, Western Cape had brought an application for the relocation of the residents to the TRAs in Delft.

3. Prior to the application to court there had been engagement with the residents in order to reach an agreement with them for their relocation from Joe Slovo to the TRAs in order to enable the upgrading of Joe Slovo informal settlement.
4. As a result of the engagement referred to in 3 above some of the residents relocated voluntarily to the TRAs in delft.
5. Some of the residents refused to relocate voluntarily and their refusal made the upgrading of the informal settlement impossible hence the court was approached in order to resolve the impasse.
6. The High Court agreed with Thubelisha Homes , Minister of Housing, Minister of local Government and Housing, Western Cape that the residents should be relocated to the TRAs and this is the judgement that the residents appealed to the Court.
7. The court has now also agreed that the residents have to be relocated to the TRAs subject to the terms and conditions which are dealt with below.

### THE JUDGEMENT

8. When the matter was argued in the High Court and the Constitutional Court the applicants in the High Court had proposed that the residents should be relocated over a period of 45 weeks and both court have accepted this proposal and have made it to be an order of the court.
9. In terms of annexure "A" to the order of the court the relocation of the residents has to commence on the 17<sup>th</sup> August 2009 and be completed by the week commencing on the 21<sup>st</sup> June 2010.
10. The Court has also made it possible for the parties to engage, through their legal representatives, with a view to reaching an agreement on the date of the commencement of the relocation and the timetable for relocation if these are to be different to the dates set out in annexure "A". This engagement has to be completed by the 30<sup>th</sup> June 2009 and if the engagement results in the parties agreeing to a different timetable such agreement must be placed before court on the 7<sup>th</sup> July 2009 so that the court can issue an order giving effect to the said agreement.
11. It is important to note that the engagement referred to above is only limited to the following issues :-

11.1 a date upon which the relocation will commence different to that contemplated in annexure "A",

11.2 a timetable for the relocation process different to that contemplated in annexure "A".

11.3 any other relevant matter upon which the parties agree to engage.

12. This engagement has been commenced with and is ongoing.

13. The court has ordered that the residents who vacate Joe Slovo should be provided with alternative accommodation in the form of temporary residential units. The court has differentiated between the temporary residential units that are already in existence and those that still have to be constructed.

14. In respect of the temporary residential units that already exist the court has prescribed that such units must :

14.1 be at least 24m<sup>2</sup> in extent;

14.2 be serviced with tarred roads;

14.3 be individually numbered for the purposes of identification;

14.4 have walls constructed with a substance called Nutec;

14.5 have a galvanised iron roof;

14.6 be supplied with electricity through a pre-paid meter;

14.7 be situated within a reasonable proximity of a communal ablution facility;

14.8 make reasonable provision (which may be communal) for toilet facilities with water-borne sewage; and

14.9 make reasonable provision (which may be communal) for fresh water.

15. In respect of the temporary residential units still to be constructed the court has ordered that these must be of an equivalent or a superior quality to the existing units.

16. The court has also directed that each affected resident has to be engaged at least one week before his relocation and that such engagement must include (but not limited to ) the following issues :

16.1 Ascertainment of the names, details and relevant personal circumstances of those who are to be affected by the order;

16.2 The exact time, manner and conditions under which the relocation of each affected household will be conducted;

16.3 The precise temporary residential accommodation units to be allocated to those persons to be relocated;

16.4 The need for transport to be provided to those to be relocated;

16.5 The need for transport of the possessions of those to be relocated;

16.6 The provision of transport facilities to the affected residents from the temporary residential accommodation units to amenities, including schools, health centres, etc.



16.7 The prospect in due course of the allocation of permanent housing to those relocated to the temporary residential accommodation units, including information regarding their current position on the housing waiting list, and the provision of assistance to those relocated with the completion of application forms for housing subsidies.

17. Thubelisha Homes was directed to render assistance to the parties affected to move their possessions in so far as it may be reasonably practicable.

18. The residents were interdicted, once they have been relocated from Joe Slovo, from returning to Joe Slovo for the purposes of erecting or taking up residence in informal dwellings.

19. The court directed that the residents are entitled to remove their informal structures when they leave Joe Slovo and that after the informal dwellings have been vacated the housing that remains may be demolished.

20. The court directed that we must lodge affidavits with the registrar by no later than 1 December 2009 reporting on the implementation of the order

as well as the allocation of permanent housing opportunities to those affected by the order.

21. The court directed that 70% of the Breaking New Ground houses to the current residents of Joe Slovo and those that had relocated voluntarily from Joe Slovo in order to give way to the development provided that they apply and qualify for this housing.

22. We were also ordered to inform the other parties and the court within 14 days from the date of judgement if the number of the number of houses is likely to be fewer than 1 500. We have since been instructed that the number of houses to be built will not be fewer than 1 500 and the obligation to report to the other parties and the court did not arise.

23. The court also directed the Minister of Housing and the Minister of Local Government and Housing to ensure that the successor to Thubelisha Homes agrees to be bound by the obligations of Thubelisha Homes under the order. Thubelisha Homes will be relieved of its obligations once the successor agrees to be bound by the obligations of Thubelisha Homes.

24. The court made provision for the parties to approach it for the amendment, supplementation or variation of the order in the event that the order has not been complied with, or should the order give rise to

unforeseen difficulties. The party approaching the court should give notice to the other parties.

25. The court also ordered that 50% of the legal costs incurred by the residents should be paid by Thubelisha Homes, Minister of Housing, Minister of Local Government and Housing, Western Cape, jointly and severally.

#### CONCLUSION

26. After the delivery of the judgement we have met with the representatives from Thubelisha Homes, Department of Human Settlements as well as the Western Cape Provincial Department of Human Settlements.

27. In our meetings referred to above we have been instructed that the houses to be built at Joe Slovo informal settlement will not be fewer than 1 500.

28. We have also been instructed to engage with the representatives of the residents with the view of seeking an agreement regarding the date of the commencement of the relocation as well as the timetable for the relocation. We are scheduled to meet with the representatives of the residents on the 29<sup>th</sup> June 2009 in this regard.