

Case Study: The Burgers Park Community v. The City of Tshwane

A Legal Victory for the Homeless and a Scathing Rebuke of a Lawless State

Introduction

In a landmark judgment delivered on December 4, 2023, the High Court of South Africa in Pretoria issued a powerful statement on the state of lawlessness in the country while simultaneously delivering a significant victory for the homeless. The case, *The Burgers Park Community v. The City of Tshwane Metropolitan Municipality*, has profound implications for the rights of vulnerable communities and the accountability of the South African government. This case study breaks down the court's decision in layman's terms, explaining what it means for hardworking South Africans and the ongoing struggle for social justice.

The Heart of the Case: A Community's Fight for Shelter

The case was brought by 26 members of the Burgers Park community, a group of people living in makeshift shelters made of cardboard and plastic on the sidewalks of Pretoria. The City of Tshwane, in enforcing its municipal by-laws, had demolished their homes, leaving them destitute. The community approached the court seeking not just the right to rebuild their shelters but also demanding that the city provide them with emergency temporary accommodation.

The Judgment: A Tale of Two South Africas

Acting Judge V. Ngalwana's judgment was more than just a legal ruling; it was a powerful social commentary on the state of South Africa. The judge began with a blistering critique of the nation's "cesspool of lawlessness." ¹ He painted a grim picture of a nation where:

- Corruption is rampant at the highest levels: The judge cited the conviction of a former National Police Commissioner for corruption and allegations of serious misconduct against the President. ¹
- The law is selectively enforced: While high-ranking officials and wealthy individuals seem to evade justice for serious crimes, the poor and homeless are criminalized for trying to survive.
- Language is used to hide the truth: The judge criticized the use of euphemisms like "accounting irregularities" to describe what is essentially theft and fraud, making it harder to hold powerful people accountable. ¹

This, the judge argued, creates a tale of two South Africas: one where the powerful are above the law, and another where the powerless are crushed by it. He questioned how the poor could be expected to respect the law when they see their leaders flouting it with impunity.

The Court's Decision: Upholding the Constitution

Despite the community's violation of municipal by-laws by erecting their shelters on public sidewalks, the judge refused to simply punish them. Instead, he focused on the government's

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constitutional obligations. Section 26 of the South African Constitution guarantees everyone the right of access to adequate housing and requires the state to take reasonable steps to make this right a reality. 2

The court found that the City of Tshwane had failed in its duty. It couldn't just demolish the community's homes without providing a viable alternative. The judge issued an interim order compelling the city to provide the community with alternative accommodation fit for human habitation within 48 hours. 1

The S v Selebi Precedent: A Mirror to Hypocrisy

In his judgment, the judge referenced the case of S v Selebi, where a former National Police Commissioner was convicted of corruption. 3 The judgment also alludes to the principle that cabinet members, including the President, are prohibited from undertaking any paid work outside of their official duties, a principle that has been a focal point in discussions around high-level corruption. 1

By bringing up these examples, the judge highlighted the glaring hypocrisy at the heart of the South African justice system. While the state prosecutes homeless people for building shelters, it often fails to hold its own powerful officials accountable for far more serious crimes. This double standard, the judge argued, erodes public trust in the law and encourages a culture of lawlessness.

What This Means for Hardworking Communities: The Advantages

This judgment is more than just a victory for the Burgers Park community; it offers several key advantages for hardworking, ordinary South Africans:

- 1.The Constitution is a Shield for the Powerless: The case proves that the Constitution is not just a piece of paper. It has real power to protect the rights of ordinary citizens against the actions of the state. Communities can and should use the courts to enforce their constitutional rights.
- 2.Government Accountability: The judgment sends a clear message to municipalities and government departments that they cannot ignore their constitutional duties. They must create and implement coherent plans to address social problems like homelessness, rather than simply resorting to punitive measures.
- 3.The Rule of Law for All: The judge's insistence that the law must apply equally to everyone is a crucial victory for justice. It challenges the idea that the rich and powerful can get away with anything, while the poor are punished for minor infractions.
- 4.Immediate, Tangible Relief: The court's order for immediate alternative accommodation shows that the legal system can provide practical, life-saving solutions for people in desperate situations.
- 5.Exposing the Rot: By publicly calling out the hypocrisy of the state, the judgment helps to expose the systemic corruption and inequality that plague South Africa. This public exposure is a vital first step towards meaningful change.

Conclusion: A Beacon of Hope

The Burgers Park case is a powerful reminder that even in a society grappling with lawlessness and corruption, the law can still be a force for good. It demonstrates that the

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courts can play a crucial role in holding the government accountable and protecting the rights of the most vulnerable. For the hardworking communities of South Africa, this judgment is a beacon of hope, affirming that their rights matter and that the fight for a just and equitable society is far from over.

References

- [\[1\] The Burgers Park Community v/s City of Tshwane Metropolitan Municipality \(120856/2023\) \[2023\] ZAGPPHC \(4 December 2023\)](#)
- [\[2\] The Constitution of the Republic of South Africa, 1996](#)
- [\[3\] S v Selebi 2012 \(1\) SACR 209 \(SCA\); 2012 \(1\) SA 487 \(SCA\)](#)