

High Court declares City of Johannesburg's temporary accommodation model unconstitutional

Today the Johannesburg High Court ordered that two house rules being imposed on residents of the Ekuthuleni shelter are an unjustifiable infringement on the residents' rights to privacy, freedom and security of the person and human dignity. Judge Wepener interdicted the City of Johannesburg and its service provider, Metropolitan Evangelical Services (MES), against enforcing these rules at the shelter.

Ekuthuleni shelter was provided by the City to some of the residents of Saratoga Avenue who were relocated after the *Blue Moonlight* judgment by the Constitutional Court in 2011. The City outsourced the management of the shelter to MES, a Christian organisation that runs shelters and provides other social services for homeless people in the inner city. The City contracted MES to apply its "managed care model", which it implements in its own homeless shelters, in Ekuthuleni. The City argued that Ekuthuleni is an overnight facility "akin to hotels, hospitals and student residents" and does not constitute a "home". However the Judge found that the managed care model primarily caters for the supply of overnight facilities and is "not developed to accommodate persons in an emergency or temporary situation, as ordered in *Blue Moonlight*."

The City and MES further argued that because the residents' stay at the shelter is meant to be temporary and short-term, the infringement of certain constitutional rights was justifiable. The court found that "whether a period of six months twelve months or longer was foreseen is of no consequence as it had turned out that some of the persons who were the beneficiaries of the order of the Constitutional Court are still, some three years later, housed by the City pursuant to that order."

The court found that "whilst the [Saratoga Avenue evictees] fall in a category of persons who require temporary or emergency accommodation, they do not fall into the category of persons who normally visit an overnight shelter" i.e. homeless and destitute individuals who seek overnight accommodation on an ad hoc basis.

On the day-time lockout rule, which forces all residents out of the shelter between 08:00 and 17:30 during the week (allegedly to encourage them to seek employment opportunities), Judge Wepener found that this rule results in "residents being exposed to dangers inherent in street life and inhibits their freedom in material respects and thus clearly infringes on their right to freedom, security and dignity." Practically, this means that if the residents "should feel unwell or wish to attend to some private or personal matter, it must be done or suffered elsewhere than the place they stay."

The High Court also found that the policy that disallows spouses and life partners from living together at the shelter is unjustifiable, with "humiliating consequences" which:

compromises and disrupts the family as a unit; it creates emotional distance in a relationship; the inability to live as a family represents a loss of support for them and one another; it creates an additional financial burden on the couple's limited financial resources; couples must implement ways to mitigate the lack of communication that the rule imposes on them; the most basic associative privileges connected to a marriage or permanent relationship are denied to them.

According to Nomzamo Zondo, director of litigation at SERI, "This judgment confirms that poor people have the right to be treated with the same dignity as everybody else. It is a vindication for our clients and for poor people in Johannesburg generally. We call on the City not to appeal the judgment, but to commence the important and urgent task of providing dignified housing for those people in Johannesburg who currently lack it."

Download the judgment here: http://www.seri-sa.org/images/Dladla_Judgment_22Aug14.pdf

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