

History & Politics of Eviction in SA

PISA used in Apartheid to enforce segregation and dispossess POC in "white" areas.

PISA in contradiction with Prevention against eviction wo court (S26), human dignity (S10), privacy (S14), Freedom & Security (S12), interest of child (S28)

PIE

Occupiers are provided with procedural & substantive safeguards against arbitrary evictions

Evictions can only take place through **court order** - court must ensure order does not worsen the circumstances of marginalized.

Right to Dignity must be upheld.

Municipalities must have a housing plan for evicted - temporary as emergency relief if no perm housing.

The Problem with PIE

PIE has no remedy for illegal evictions - many uncompliant evictions have taken place.

People have tried to use MVS

Authority for court order requirement - *PIE* or *Mamelodi

Ngomane v Johannesburg

Facts

People living on traffic Island

Dismantled home during the day, rebuilt at night.

Municipality came during the day, removed belongings and destroyed them

Remedy?

MVS? No, Impossible because materials destroyed

Tswelopele? No, there was no eviction from home: unassembled building materials in a pile could not be deemed as "buildings"/"structures" (wording in PIE)

Ngomane v Johannesburg (cont)

New Remedy: s25(1) - no one can be deprived of property except in terms of law of gen application, and no law can permit arbitrary deprivation of property.

Tswelopele

Facts

Occupiers unlawfully evicted - no court order. (via: *PIE* & *S26*)

Building materials destroyed

Tswelopele brought MVS - can prove facta probanda but goods destroyed.

But because of egregious violation of constitutional rights, they cannot get away with this - constitution must do something (*Fose*).

Appropriate Remedy (s38)

Occupiers must get shelters back.

Authorities must reconstruct shelters.

Building materials must be replaced with materials that afford habitable shelter

Misgivings

Specific requirements for constitutional remedy not clearly outlined

Kinds of relief remedy affords not clearly set out

Considered duplicate of remedies of outcomes already in precedent

Otherwise, commentators happy and find this sufficiently fulfilling s8 & s38

Using Tswelopele

Requirements for Constitutional Remedy:

Violation of s26: 1) Eviction from home 2) without a court order

What is a home?

City of CT v Rudolph: makeshift temp structures can = homes (may be all one can afford)

Breedevallei Munisipaliteit. Occupation of low cost housing for 10 days & met requisite degree of performance = home

Using Tswelopele (cont)

SCA Benner v Min Land Affairs: A holiday cottage not a home. Four requirements:

-Regular occupation x some degree of performance

-dwelling in which one habitually lives

- fixed residence of household

- not merely used for occasional visits

Schubart Park

Illegal eviction from Schubart Park, residents want to return

Two Potential Claims

MVS

Because they were despoiled of their *homes*, demands of s26(3) are at issue here.

Remedy: Residents allowed to return, buildings restored so they are fit for habitation - temporary accom = appropriate relief.

Reason for granting MVS = MVS not regarded as appropriate relief as applicants have brought application on violation of s26(3) (i.e constitutional rights). Argued that it cannot do important work of vindicating ConRights.

Can MVS be used in Evictions?

While MVS does not do enough to = appropriate relief, it has other advantages:

General advantages: can be used by unlawful occupiers + can deter unlawful evictions + fast

1. Speedy remedy that does not ask Q's about merit
2. Can include rebuilding of structures (ie to restore status quo)
3. Temporary solution does not prevent vindication of rights later.
4. Relevant in highlighting plight of vulnerable occupiers.

