

PRESS STATEMENT
31 August 2020



VICTORY FOR RECLAIM THE CITY AND NDIFUNA UKWAZI AS HIGH COURT SETS ASIDE THE SALE OF THE TAFELBERG SITE



In a landmark victory for Reclaim the City and Ndifuna Ukwazi, the Western Cape High Court on Monday set aside the Western Cape Provincial Government's sale of the well-located Tafelberg property to a private buyer for R135 million and affirmed that the Province and the City of Cape Town have a constitutional duty to combat spatial apartheid.

Land and housing activists from Reclaim the City and Ndifuna Ukwazi gathered outside the court to celebrate this monumental victory with song and dance despite the icy rain. They were joined by representatives from Sea Point for All, the National Association for Social Housing Organisations (NASHO) (in their personal capacity), Equal Education, and the Sea Point Community Action Network (CAN).

The judgment follows years of dedicated campaigning and litigation by Reclaim the City and Ndifuna Ukwazi to #StopTheSale of the Tafelberg property in Sea Point – which is 1.7 hectares in size or the equivalent of an entire city block. The site provides a prime opportunity to redress spatial apartheid through the provision of well-located public land for social housing. RTC and NU have maintained that the exorbitant cost and lack of well-located land are the single greatest impediment to achieving spatial

justice. In this context, the Province's disposal of strategic, well-located public land such as the Tafelberg site – for a short-term capital injection – was blindingly shortsighted, especially given that the site had previously been earmarked for addressing the crisis of entrenched spatial inequality. Judges Patrick Gamble and Monde Samela's ruling vindicates our calls for a more equal and just city that promotes spatial, racial and economic inclusion.

The Province and the City own considerable parcels of land in central Cape Town but, through their regeneration policies, have been selling off under-utilised land on the open market to the highest bidder rather than using this land for the development of social and affordable housing. This approach stands in stark contrast to the Province and the City's constitutional and legislative obligations to combat spatial apartheid. The Court found that the Province and the City “did not have suitable policies in place to facilitate and promote access to affordable housing” and had “not taken adequate steps to address the legacy of apartheid spatial planning in central Cape Town and its surrounds”. Judges Gamble and Samela found that the Province and City had therefore failed to comply with their obligations to advance equitable access to land and the right to housing in terms of section 25 and 26 of the Constitution.

For this reason, the Court ordered the Province and the City to draw up a combined plan on how these branches of Government will jointly address the legacy of spatial inequality in central Cape Town and present that policy to the Court by no later than 31 May 2021.

Judges Gamble and Samela also declared the Western Cape Administration Act (WCLAA), a provincial law that regulates the administration and disposal of public land, unconstitutional to the extent that it allows any government department to sell public land *before* consulting with the public.

In the National Department of Human Settlements and the Social Housing Regulatory Authority (SHRA)'s separate application against the Province and the City, which was heard alongside the main application, the Court found that the former Premier and the Province were obliged to consult with the National Department in relation to their decision to sell the Tafelberg property. The Premier's admitted refusal to consult with the Minister of Human Settlements was a breach of her duties to promote co-operative governance between the different spheres of government in terms of Chapter 3 of the Constitution.

Mandisa Shandu, Executive Director of Ndifuna Ukwazi, commented:

“Even though this case has been four years in the making, it's really about over 400 years of land dispossession and exclusion in Cape Town. The High Court's decision requires the Province and City to urgently come to grips with and implement their

legal duties to redress spatial inequality. This is a great victory for people who have been struggling to access land for affordable housing!”

Ndifuna Ukwazi and Reclaim the City are still studying the judgment and will issue further statements once this process has been completed.

- Read the full Judgment of the Western Cape High Court here: <https://j.mp.sh/qIPgThH>

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ISSUED BY: NDIFUNA UKWAZI AND RECLAIM THE CITY