



PRESS RELEASE

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HIGH COURT DECLARES CITY OF CAPE TOWN'S USE OF BY-LAWS TO ILLEGALLY EVICT DISTRICT 6 OCCUPIERS UNLAWFUL

In a powerful defense of the rights of vulnerable occupiers, the Western Cape High Court on Thursday [declared](#) the City of Cape Town's use of municipal by-laws to confiscate and "dispossess" tents, informal structures and personal possessions belonging to 46 vulnerable occupiers living on a public parking lot on Sydney Street in District 6 unlawful, in terms of section 26(3) of the Constitution and the [Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998](#) (PIE Act).

Judge Rosheni Allie, who heard the matter on an urgent basis, found that the "*effect of the City's actions were to ... evict occupiers without a court order*". The court ordered the City to return all of the occupiers' tents, materials and property within the next 5 days (or pay damages of R1 700 as compensation) and interdicted the City from evicting the occupiers or confiscating their tents, informal structures or personal possessions without a court order.

The judgment stems from the [City of Cape Town's latest crackdown on vulnerable occupiers on 19 September 2021](#), when the City's Law Enforcement Unit confiscated the tents, informal structures and personal belongings of approximately 100 occupiers living on the Sydney Street parking lot in District 6. Many of the occupiers have lived in the public parking lot for two years, and some have even lived there for up to 8 years. A number of the occupiers, represented by the Ndifuna Ukwazi Law Centre, challenged the City's use of obscure provisions of two of the City's municipal by-laws to circumvent occupiers' constitutional protections and effect an illegal eviction in direct conflict with the Constitution and the PIE Act. Some of the occupiers were fined for contravening the By-law relating to Streets, Public Places and the Prevention of Noise Nuisances (the same by-law that is subject to a [constitutional challenge](#) for infringing a range of fundamental rights and discriminating against people experiencing homelessness), while others were absurdly fined R2 000 for "*block[ing] or imped[ing] coastal access land or defac[ing] infrastructure relating to coastal access land*" despite the fact that District 6 is approximately 4km away from the coast.

In a contextually sensitive judgment, Judge Allie recognised that unlawful occupation is driven by need and Cape Town's acute lack of affordable housing. She found that the occupiers are "*destitute people*" who have lost their only homes and "*do not choose to live in a public parking lot on Sydney Street out of malice or willfulness, but out of desperation and need*". The court placed the blame for unlawful occupation of land on the City, which has failed to prioritise the delivery of government-subsidised housing (at paragraphs 138 and 139):

“[The occupiers] brave the inclement weather, run the risk of being attacked by criminal elements and endure the general hardship of living in a tent or other informal structure because the housing [waiting] list, at least in the case of the first applicant, has not advanced sufficiently since 1991, in order to provide her with a house. The housing crisis in the [City’s] jurisdiction shows no signs of sufficient improvement to avert the human catastrophe of people living in the manner in which the [occupiers] do.”

The court strongly rebuked the City for using its by-laws to confiscate the occupiers’ homes, finding that the City actions amounted to an illegal eviction and an attempt to circumvent the constitutional and legislative protections of unlawful occupiers. According to Judge Allie:

“It is imperative that neither [the state] nor a private landowner may circumvent the requirements of the PIE Act or purport to take the law into their own hands to evict any unlawful occupiers.”

The court also criticised the City for trying to circumvent legal eviction processes. Judge Allie rejected the City’s use of the by-law stating that the City *“cannot be judge, jury and executioner in its own case”* and emphasised the importance of courts having oversight in eviction matters:

“In the absence of judicial oversight and fair process, the eviction of a person from their home ... violates that person’s constitutional rights to dignity, housing, safety and security of the person, health, and (in the context of the Covid-19 pandemic) even the right to life.”

For this reason, the court found that *“if there is any doubt about whether a structure is occupied ... [the state] or private person must obtain a court order before it can evict a person from, or demolish, that structure or building”*. This, the judge said, *“applies to all structures that resemble a ‘hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter”*.

In dismissing the City’s defense of its use of the by-law as disingenuous, Judge Allie pointed to the fact that the City had *“not made a single allegation of how and in which manner each [occupier] contravened the by-law”*. She found that the City’s approach was *“devoid of facts”* and is precisely why vulnerable occupiers believe that *“they are being criminalized for being poor and homeless”*. The court also raised serious questions about the adequacy of the alternative shelter the City offers in its Safe Spaces, such as Culemborg, where people are removed from well-located areas and locked out of the shelter during the day:

“People at Safe Spaces in Culemborg wake up at 6am, have breakfast and leave by 8am and return at 17h00. That is clearly not a home in which household members can remain together during the day... What [the occupiers] sought to create for themselves, was a home, albeit in a temporary structure.”

Daniellé Louw, attorney for the occupiers, said:

“Our clients are elated with the outcome of their case. This judgment confirms that the PIE Act applies to street-based occupiers, that their tents and habitable structures are their homes, and that the City must obtain a court order when it seeks to evict them. We trust that this judgment has dissuaded the City from continuing its rampage to illegally dispossess and displace other street-based occupiers.”

- Read the judgment here: <https://jmp.sh/quzzw9u>
- Read Ndifuna Ukwazi’s press release on the illegal eviction of occupiers from Sydney Street here: <https://jmp.sh/5i3QKxF>

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