

Cape Town's emergency housing programme is unconstitutional, says court

By [Tania Broughton](#)

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The Cape Town High Court has [declared](#) the City of Cape Town's emergency housing programme to be unconstitutional.



Bromwell Street families facing eviction must be provided with housing close to where they live within a year, a court has ruled. Archive photo: Ashraf Hendricks

Cape Town High Court Judge Mark Sher stopped the eviction order facing the families living in Bromwell Street, Woodstock, and directed the city to provide them with emergency housing in the inner-city precinct “as near as is feasibly possible” to their existing homes, within a year.

He also directed the city to report back to the court within four months on progress with identifying suitable accommodation for the families.

The 26 people, including some children, were facing homelessness after being ordered to vacate their homes. They were first served with eviction orders in 2014 by Woodstock Hub Pty Ltd, a property development company which bought the sub-divided cottages in Bromwell Street for R3.15m in 2013.

The families said they had lived there their entire lives and had taken over leases from their grandparents.



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Obligation to provide emergency housing

In 2016, the Cape High Court ordered their eviction.

Subsequently, there were negotiations with the city when attorneys for the families pointed out that they would be rendered homeless and that the city had an obligation to provide them with temporary/emergency housing as close as feasibly possible to their existing homes. The city responded that it had no such obligation, and said that the court had not directed this.

The families then approached the court, seeking an order that this was unconstitutional. They argued that there were about 45 parcels of vacant land within a 5km radius which could be used for a residential development for them.

While the court application was pending, the city offered them “corrugated shack structures” in Wolwerivier, some 25km outside of the city centre, only accessible by taxi because there was no public transport.

They said it would cost at least R30 a person a day for transport and there were no schools.

Judge Sher said while city officials had noted the families’ concerns about being relocated far away, they had said the issue was complex and the city had “limited options”.



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Inner-city housing programmes

Officials had said there were inner-city housing programmes in the planning stage, but the 45 parcels of land identified by the families, were either parks, parking lots or too small.

The judge said in 2017, while he was still hearing the case in court, the city had seemed to do an about-turn, undertaking to provide affordable emergency housing in the city centre to cater for those being evicted. The city filed a new affidavit, this time offering the families emergency housing in Philippi, about 16.5km from Woodstock, in the form of 36m² plots with building materials. The city said the site was not serviced, and would not be until the families moved there.

The offer was still on the table when the Covid-19 pandemic hit South Africa, the lockdown occurred and Philippi became a virus hotspot. The families refused to accept the offer because of health and safety concerns. They also insisted that it did not meet the city’s constitutional and statutory obligations.

Judge Sher said local government could not rely on a “no funds” excuse because it was expected to budget for and provide emergency housing.

“The city does not appear to have a comprehensive workable, coherent emergency housing plan or programme, and appears to have adopted inconsistent and contradictory stances and policies.”

“It appears that from 2020, the policy was one of relocating evictees from the inner city to informal settlements.”

“The city did not indicate how determinations and placements are made. All we are told is that, in a supreme twist of irony, evictees must place themselves on a waiting list for allocation of emergency housing. If there are criteria and guidelines, these have not been disclosed.”

He said the city had also not provided details of how much money had been allocated for emergency housing or how much had been spent.

“It put forward very little by way of substance in support of its claim of financial constraints.”



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'Irrational' and 'arbitrary' approach

He criticised the city's “irrational” and “arbitrary” approach to the provision of temporary emergency housing, in terms of which different evictees were offered different types of emergency or transitional housing. “In my view, the differentiation in treatment which the city's emergency housing programme affords to homeless evictees in the inner city, and in Woodstock and Salt River in particular, is not only unreasonable, but also irrational because it is arbitrary in its implementation.”

Attorney Disha Govender, who represented the families, said: “We believe the judgment and order will go a long way to ensuring that the Bromwell residents are not displaced from the only community they have ever known and hope that it will result in systemic change at the city-level in how it responds to the emergency housing needs of evictees.”

Resident Chanell Commando said the case was not just about the Bromwell residents “but about what is happening in our community” and she hoped it would help others in the same situation.

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