



THE PORT ELIZABETH MUNICIPALITY CASE – VIDEO TRANSCRIPT

CHAPTER: A VERY DIFFERENT CASE

THANDI MATTHEWS

So, we're jumping now to 2004. And in that case, which I find to be quite contradictory to the Soobramoney case, you came out with a different outcome. In this case, we had unlawful occupiers on private land, and they were subject to eviction proceedings. And there was a requirement to provide them with alternative accommodation, and you found in that case, that it would not be just and equitable to evict them from privately owned land. A very different outcome to what you found in Soobramoney, where Mr Soobramoney was not entitled to his emergency healthcare. Why was this a separate outcome or a different outcome in your thinking, so many years later after Soobramoney?

JUSTICE ALBIE SACHS

I don't see it as different at all, at all, at all, at all. On the contrary. In the case of Mr Soobramoney it was using scarce, expensive public resources to prioritise him, to push him ahead in the queue. And we refused. In the case of the Port Elizabeth Municipality I remember when I was asked to provide the first judgment, and I read it... *'Oh, no, no, no, no, no, I can't.'*

CHAPTER: FACING THE FACTS

The facts showed that, there were about ten to twelve black African families who'd been evicted from somewhere in Port Elizabeth, as it was then called, and they'd found some vacant land, unoccupied land, near a very upmarket white suburb. And they put up their shacks there, and the first group, I think, had been there for maybe six or seven years. Others came. They found work

nearby. Their kids went to school nearby. They would get water from taps nearby. But the local white landowners said, *'No, this is our land'*. They went to the council, the council turned to the black people and said, *'Sorry people, but you can't put your shacks up on somebody else's land. You've got to go'*. They said, *'We don't mind going but we want alternative accommodation'*. And the council said, *'Well, we've got long lists and queues. You can get into the queue, but it's going to take you years. You've got to find somewhere else yourselves'*. And the eviction order is granted. It's called the Prevention of Illegal Eviction and Unlawful Occupation Act, PIE.

CHAPTER: WHAT THE CONSTITUTION SAYS

And the Constitution says, no one should be evicted from their homes without a court order, that takes into account all their relevant circumstances. That's in the right of access to housing. So, the PIE act allows for the eviction. The council goes to court. The High Court says, *'Move. You can't put up your shacks on somebody else's land.'* I think it's the Legal Resources Centre again - takes it on appeal - and it goes to the Supreme Court of Appeal in Bloemfontein. And the Chief Justice then was Lex Mpati. And he finds some technical basis for overturning the eviction order. And I look at it and I find my sympathy is with him, but that technical basis is very fragile. And I can't...I can't handle this case I've sworn to uphold the law without fear or favour or prejudice, and justly the law is very clear. You can't put up your shacks on somebody else's land, whether it's their garden or neighbouring land or whatever it might be.

CHAPTER: DO I NEED TO RESIGN?

And I've sworn to uphold the law and I'm a Judge. I've got to overturn the decision, technical decision that's not properly based of the Supreme Court of Appeal. But I'm also Albie and we fought for freedom. We fought for land. We fought for rights. And here are white families. They've got their homes. It's land they're not even using. And why are so many black people homeless? Because of years of apartheid and segregation and forced removals and denial of job opportunities and pass laws. But I can't order the eviction. And if I can't order their eviction, I've got to resign. I seriously thought that I might have to resign as a Judge. Nothing would make me order their eviction. And if I can't do it, I can't fulfil my obligations, then I must resign. And I'm even thinking of, you know, the implications of it, and how it would be received and so on. Fortunately for me I was able to convert a personal dilemma into a constitutional tension, because the Constitution says everybody has the right of access to adequate housing. So, what happens now?

CHAPTER: ARBITRARY DEPRIVATION OF PROPERTY

The owners of the land, they don't have a right, there's no entrenched right to property. But there's a right not to be arbitrarily deprived of property. If people now put up their shacks on your land, you are being arbitrarily deprived of your property. So, they have a claim in court, but the people have a right to a home, to housing. What happens when they clash? And the PIE Act said the court can only order the eviction if it's just and equitable to do so. And I said, *'In a case like this, it's just and equitable if alternative accommodation is found - the council must find alternative accommodation would be one example. But even if that isn't clear, there should at least be mediation'*.

And what I imagined then was the homeowners could all chip in - a thousand rand here a thousand rand there - they could find enough money to find land elsewhere where the people could go. And that's sensible. And people looking after their property can be very, very sensible. And they're used to spending money. That's what I had in mind.

CHAPTER: MEANINGFUL ENGAGEMENT

And I used the phrase *'meaningful engagement between the parties in the form of mediation.'* And I said because there hadn't been any mediation, it wasn't just and equitable. And therefore, I overturned the eviction, so that the whole matter could go back to be dealt with through mediation. Zak Yacoob says, *'Albie, this mediation is too weak. The big thing is meaningful engagement.'*

And the next case we had was Olivia Mansions. Zak is writing, and he picks up on meaningful engagement, and he introduces that idea. It's both procedural and substantive, and I emphasised why it's important. It gives a voice to the poor. They're not just an anonymous homeless group saying, *'We don't want to be moved.'* They're people with families, with names, with histories. Some had been there for years. Some had only moved in recently. Situations varied. And they're not just the victims of legal processes. They're participants engaging in legal processes. And what are they claiming? They're not just claiming shelter. The home...The home is so meaningful. It's a place where in the hurly burly of a rough life, you have tranquillity, you have intimacy, you can study, you can work, you can love, you can dream. In a world that is so harsh and relentless, the home is the place that you retire to. It's much more than just shelter. And so, I'm emphasising all those aspects and the meaningful engagement mediation is giving a voice now to the people most affected. And that got

picked up by Zak, in a very robust way and in a way that I think is extremely valuable. It brings the poor, the litigants, directly into helping to find solutions. And it's not just *'let's talk about it and come back with the settlement.'* The Court will say, *'These are the things you have to attend to. Is there alternative accommodation? Do you differentiate between different families depending on how long they've been there, the size of the family, the number of children?' ... you know, factors of that kind... 'Is there employment nearby?'* And then report to the Court and the Court will make the final order.

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