



## Bushula v. Ukhahlamba District Municipality

[2012] ZAECGHC 1

**Country:** South Africa

**Region:** Africa

**Year:** 2012

**Court:** High Court of South Africa (Eastern Cape Division)

**Health Topics:** Water, sanitation and hygiene

**Human Rights:** Right to water and sanitation

### Facts

This case was about the scope of the constitutional right of access to a water supply. The applicant was a resident of Kwa-Ngquba Locality and the respondent was a District Municipality responsible for providing water services under the Water Service Act 108 of 2017. The case of the applicant was that in 2004, the respondent installed water pipes using draught relief funds in Kwa-Ngquba and supplied portable water from commercial taps from dam. This water supply was running until October 2008. Then the community was forced to draw water from springs which were polluted by livestock. Although the respondent began to supply water by truck cartage February 2009, this supply was not scheduled regularly and the trucks would arrive randomly, and the supply was not enough for the community's demand. The water supply stopped in June 2009. It started again in September 2009 but stopped soon after, at which point the respondent installed three two-thousand water carrying capacity Jojo tanks.

The respondent also had a project underway to upgrade the water supply scheme that was set to be complete in 2012. The Water Service Act was enacted to protect water rights stated in section 27 (1) (b) of the Constitution. The Act requires every water services authority to provide for measures to realize the rights of access to basic water supply and basic sanitation in its development plan.

The applicant filed a writ of mandamus directing the respondent to restore to Kwa-Ngquba the basic water supply.

### Decision and Reasoning

The court held that Section 27(1) and (2) of the Constitution must be construed together to define the scope of the rights and the corresponding obligations of the state. The Court found that the initial installation of the water pipes was a reasonable legislative measure taken by the respondent for the rights to access to water. The Court held the respondent did not breach section 27(2) of the Constitution read with the Water Service Act because the respondent's decision to upgrade the water system and supply the community with water tanks during the upgrade was reasonable. The Court also held that the community had a water supply, and if they thought there was not enough water, they could request the municipality to provide more tanks.

### Decision Excerpts

Section 27(1) and (2) of the Constitution must be read together as defining the scope of the positive rights that everyone has, and the corresponding obligations of the state to respect, protect, promote and fulfill such rights. (Para 16)

The community of Kwa Ngquba is not completely without the supply of water as there are Jojo tanks that have been installed to supply them with water. There is, however, a dispute as to whether the number of Jojo tanks installed is sufficient or not to provide adequate supply to the community. (Para 17)

There are water pipes installed which supplied water to the community until the supply was stopped by the very community by diverting the water to their households without the consent of the Municipality. Upon becoming aware of the water shortage, the Municipality took reasonable measures in terms of the Constitution and the law to ensure that the community of Kwa-Ngquba was not left without the supply of water. It then introduced water cartage by trucks and upon realizing that that measure was not providing an efficient water supply in compliance with the constitution, the Municipality then decided to upgrade the water supply and, by agreement with the community, introduced the supply of water through Jojo tanks in the

meantime.â€• (Para 18)

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