



South Africa v. Grootboom

Government of the Republic of S. Afr. v. Grootboom, [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (S. Afr.).

Country: South Africa

Region: Africa

Year: 2000

Court: Constitutional Court

Health Topics: Health care and health services, Poverty

Human Rights: Right to health, Right to housing

Facts

Mrs. Grootboom and other respondents were homeless and living in appalling conditions. Many had applied for subsidized low-cost housing through the municipality and had been on the waiting list for a period of up to seven years. While waiting for the assignment, they decided to move and illegally live on someone's private land. Respondents were then evicted from these informal homes.

Respondents applied to the High Court seeking an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation and certain relief. Respondents contended that Sections 26 and 28 of the Constitution of South Africa guaranteed the right of everyone to access to adequate housing and the right of children to be afforded special protection, and, in particular, shelter. Respondents also contended that South Africa's obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) further supported their section 26 claim.

The High Court held that under section 28 (c), affording special protection to children, the government is obliged to provide children and their parents with immediate shelter. However, the High Court rejected the argument that section 26 of the Constitution obliged the government to provide minimum shelter for everyone. Thus, respondents without children were not ordered to receive housing. In rejecting the section 26 claim, the High Court did not touch the issue on South Africa's obligations under ICESCR.

Against the order of the High Court, the government appealed to the Constitutional Court of South Africa. In the Constitutional Court, the respondents sought to broaden the scope of the Petition by contending that all adults, including those without children, should also be afforded the right to shelter under the order of the High Court.

Decision and Reasoning

The Court first examined what the precise obligations of the Government are under Section 26 of the Constitution of South Africa. In doing so, the Court stated that Section 26 must be interpreted in light of the remainder of the Constitution and the historical and social circumstances in which it is set. Section 26 requires that the state take reasonable legislative and other measures within the context of available resources to ensure access to adequate housing. The Court determined that the nationwide housing programme falls short of constitutional obligations insofar as it fails to provide relief for those in desperate need of housing.

At the same time, the Court determined that, contrary to the appellants' assertions, the Constitution does not draw a distinction between housing, on one hand, and shelter on another. And so it concluded that neither Section 26 nor Section 28 of the South African Constitution can be read to entitle respondents to claim shelter immediately upon demand. The High Court order to this effect therefore could not have been made.

The Court then examined whether the respondents were entitled to broaden the scope of the original application so that persons without children would be equally entitled to shelter. To this the Court stated that under Section 26(2) of the Constitution, the government is required to devise and implement, within its available resources, a comprehensive and coordinated program progressively to realize the right of access to adequate housing. This right extends to all individuals including those without children. The state housing program in the area of the Cape Metropolitan Council fell short of compliance in that it failed to provide relief

for those desperately in need of housing.

In summary, the Constitutional Court declared that the government had not met its Constitutional obligations and ordered the government, within its available resources, to devise, fund, implement and supervise measures to provide relief for all, including those without children, who are in desperate need. Agreeing with petitioner's original argument, the Court held that this decision was within keeping of South Africa's obligations under ICESCR to provide for a right to adequate housing.

Decision Excerpts

“The national government bears the overall responsibility for ensuring that the state complies with the obligations imposed upon it by section 26. The nationwide housing programme falls short of obligations imposed upon national government to the extent that it fails to recognise that the state must provide for relief for those in desperate need. They are not to be ignored in the interests of an overall programme focussed on medium and long-term objectives. It is essential that a reasonable part of the national housing budget be devoted to this, but the precise allocation is for national government to decide in the first instance.” Para. 66.

“This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.” Para. 93.

“I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the state to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce.” Para. 94.

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