

# Is a landlord obliged to provide alternative accommodation when evicting someone?

Mr Grobler was the applicant In the Constitutional Court matter of Grobler v Phillips. Mrs Phillips, who was 85 years old at the time, had been residing at the property, which was the subject of the dispute since she was 11. She began living on the property in 1947 when the property formed part of a larger farm at the time.

After Mr Grobler had purchased the property, he met with Mrs Phillips on three separate occasions and informed her that he required her to vacate the property. During the meetings, Mr Grobler advised Mrs Phillips that he was prepared to pay a certain amount towards her relocation; alternatively, he was prepared, at his cost, to provide alternative accommodation for her. Mrs Phillips did not accept any of Mr Grobler's proposals and stated that she would not move out of the property.

On 27 November 2008, Mr Grobler's attorneys requested Mrs Phillips, in writing, to vacate the property by 31 January 2009. She refused and alleged that she enjoyed an oral right of life-long habitatio, granted to her by a previous owner, which was enforceable against Mr Grobler. A right to habitatio, alternatively, habitation is a lifelong right to live on a property owned by another person. On 18 May 2009, Mr Grobler's attorneys repeated the offer in writing, but it was once again rejected. After it became apparent that the offers were not acceptable to Mrs Phillips, Mr Grobler commenced proceedings against Mrs Phillips in the Somerset West Magistrates' Court.

On appeal to the Constitutional Court, the Court had to decide whether it is just and equitable to grant an order for eviction, and in doing so, the Court must consider all relevant circumstances. This includes, except where the land is sold in a sale in execution pursuant to a mortgage, whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another landowner for the relocation of the unlawful occupier. This also entails considering the rights and needs of the elderly, children, disabled persons,

and households headed by women.

The question of whether the constitutional rights of the unlawful occupier are affected by the eviction is one of the relevant considerations, but the wishes or personal preferences of the unlawful occupier are not relevant. It is also trite that a private owner has no obligation to provide free housing. The Constitutional Court found that the Supreme Court of Appeal failed to balance the rights of both parties. The Court further found that Mr Grobler was the owner of the property and has been enforcing his rights of ownership for the past 14 years. He has offered alternative accommodation on numerous occasions. If this offer were to be accepted, Mrs Phillips would continue to enjoy having a decent home.

The Court found that the offer was generous and should not be construed as setting a precedent on what other private landowners are obliged to do in similar circumstances. The Court further found that there is no obligation on a private landowner to provide alternative accommodation to an unlawful occupier. The appeal was upheld.

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