

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

Case No.: 06/13865

In the matter between:

LINDIWE MAZIBUKO	First Applicant
GRACE MUNYAI	Second Applicant
JENNIFER MAKOATSANE	Third Applicant
SOPHIA MALEKUTU	Fourth Applicant
VUSIMUZI PAKI	Fifth Applicant

and

THE CITY OF JOHANNESBURG	First Respondent
JOHANNESBURG WATER (PTY) LTD	Second Respondent
THE MINISTER OF WATER AFFAIRS AND FORESTRY	Third Respondent

AMICUS CURIAE'S LIST OF AUTHORITIES

South African Cases

1. *Bhe and Others v Magistrate, Khayelitsha, and Others; Shibil v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC)
2. *City of Cape Town v Rudolph* 2004 (5) SA 39 (C)
3. *Carmichele v Minister of Safety & Security (Centre for Applied Legal Studies Intervening)*

2001 (4) SA 938 (CC); 2001 (10) BCLR 995

4. *Chairperson of the Constitutional Assembly, Ex p: In re Certification of the Amended Text of the Constitution of the RSA*, 1996 1997 (2) SA 97 (CC); 1997 (1) BCLR 1.
5. *Government of the RSA v Grootboom and Others* 2001 (1) SA 46 (CC).
6. *Harksen v President of the RSA* 2000 (2) SA 825 (CC).
7. *Jaftha v Schoeman; Van Rooyen v Stoltz* 2005 (2) SA 140 (CC); 2005 (1) BCLR.
8. *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* 2002 (5) SA 721 (CC).
9. *NUMSA v Bader Bop (Pty) Ltd* 2003 (3) SA 513 (CC); 2003 (2) BCLR 182.
10. *Pretoria City Council v Walker* 1998 (2) SA 363 (CC).
11. *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* 2002 (6) BCLR 625 (W)
12. *S v Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC)
13. *S v Mhlungu* 1995 (3) SA 867 (CC)
14. *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC)

Foreign Cases

1. *Bill of Review 0208625-3*, Special Jurisdiction Appellate Court, Paraná (Brazil), August 2002.
2. *C Masilamani Mudaliar v. Idol Of Sri Swami Nathaswami Thrukoll* (1996) 8 SCC 525, available at: http://www.legalserviceindia.com/articles/21_art.htm.
3. *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interfricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire (Democratic Republic of the Congo)*, Communication Nos. 25/89, 47/90, 56/91, 100/93 (Joined), 18th Session, October 1995.
4. *Gosslin v Quebec* (2002) 4 S.C.R. 429: available at: <http://scc.lexum.umontreal.ca/en/2005/2005scc15/2005scc15.html>.
5. *Ley Orgánica para la Prestación de los Servicios de Agua Potable y de Saneamiento*,

Fecha de la Sanción: 20 Nov. 2001, <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=206>.

6. LEY-18778, Ley que establece subsidio al pago de consume de agua potable y servicio de alcantarillado de aguas servidas. Fecha Publicación: 02.02.1989, <http://www.bcn.cl/cgi-local/socket.cgi>.
7. People's Union for Civil Liberties v. Union of India & Others (1997) 1 SCC 301 available at <http://www.hrsolidarity.net/mainfile.php/2005vol15no05/2446/>.
8. Quevedo Miguel Angel y otros c/ Aguas Cordobesas S.A. Amparo, Cordoba City, Juez Sustituta de Primera Instancia y 51 Nominacion en lo Civil y Comercial de la Ciudad de Cordoba (Civil and Commercial First Instance Court). April 8, 2002, reported in Centre on Housing Rights and Evictions, Legal Resources for the Right to Water; International and National Standards (2004), available at http://www.cohre.org/view_page.php?page_id=118.
9. *R v Director General of Water Services* [1999] Env. L.R. 114 (Q.B.D. 1998).

Foreign Legislation

1. Constitution of Ecuador, 1998.
2. Constitution of Panama, 1994.
3. Constitution of Uganda, 1995.
4. Constitution of Zambia, 1996.

International cases

1. ICJ *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary / Slovakia)*, 1997 I.C.J. 7, 36-39.
2. Inter-Am. Ct. H.R., Villagrán Morales et al. Case (the "Street Children" case), Judgment of Nov. 19, 1999 (Ser. C) No. 63.
3. *Ms L.R. et al v Slovakia*, Communication No. 31/2003, CERD/C66/D/31/2003.
4. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 ICJ 23 (Adv. Op.)
5. Rights of Nationals of the United States in Morocco (Fr. v. U.S.), 1952 ICJ 196s (Judgm.)

International Treaties and Conventions

1. African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1982).
2. African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).
3. Convention on the Elimination of all forms of Discrimination Against Women, GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (ratified on 15 December 1995).
4. Convention on the Rights of the Child, GA Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) 167, U.N. Doc. A/44/49 (1989).
5. Harvard Draft Convention on the Law of Treaties, 29 Am. J. Int'l L. 657, 658 (1935)
6. International Convention on Economic, Social, and Cultural Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966).
7. International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966).
8. Universal Declaration of Human Rights, GA-Res. 217 (III), 3 UN-GAOR, 71, UN-Doc. A/810 (1948).
9. Vienna Convention on the Law of Treaties, 1946 UNTS 3, UN Doc. A/Conf.39/27 (1969)
10. Vienna Declaration and Plan of Action, UN Doc. A/CONF.157/23 (adopted by the World Conference on Human Rights, 12 July 1993).

Commission on Human Rights

1. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-eighth session, U.N.-Doc. A/HRC/Sub.1/58/L.25, 21 August 2006: "Adoption of guidelines for the realization of the right to drinking water and sanitation".
2. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, fifty-fourth session, U.N.-Doc. E/CN.4/Sub.2/2002/10, 25 June 2002: "Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation, Preliminary report submitted by Mr El Hadji Guissé".
3. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-seventh session, U.N.-Doc. E/CN.4/Sub.2/2005/25, 11 July 2005:

“Draft guidelines for the realization of the right to drinking water supply and sanitation”.

4. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, fifty-sixth session, U.N.-Doc. E/CN.4/Sub.2/2004/20, 14 July 2004: “Report of Mr Guissé on the guidelines for the realization of the right to drinking water supply and sanitation”.

Committee on Economic, Social and Cultural Rights

1. Committee on Economic, Social and Cultural Rights, 4 December 1998, U.N.-Doc. E/C.12/1/Add.3: Concluding Observations: Canada.
2. Committee on Economic, Social and Cultural Rights, fifth session, 1990, U.N.-Doc. E/1991/23, General Comment No. 3: The nature of States Parties obligations (art. 2(1)).
3. Committee on Economic, Social and Cultural Rights, Thirteenth session, 1995, U.N.-Doc. E/1996/22: General Comment 6, The Economic Social and Cultural rights of Older Persons.
4. Committee on Economic, Social and Cultural Rights, twentieth session, 1999, U.N.-Doc. E/C.12/1999/5: General Comment 12: The right to adequate food (art. 11).
5. Committee on Economic, Social and Cultural Rights, Twenty-ninth session, 2002, U.N.-Doc. E/C.12/2002/11: General Comment 15, The Right to Water.
6. Committee on Economic, Social and Cultural Rights, twenty-ninth session, 2002, U.N.-Doc. E/C.12/2002/11: General Comment 15: The right to water.

CEDAW Committee

1. Committee on the Elimination of all Forms of Discrimination Against Women, thirtieth session, 2004, U.N.-Doc A/59/38: General Recommendation No. 25: Temporary special measures (art. 4(1))

CERD Committee

1. Committee on the Elimination of Racial Discrimination, forty-second session, 22 March 1993, U.N.-Doc. A/48/18: General Recommendation No. 14: Definition of discrimination (art. 1(1)).

Human Rights Committee

1. Human Rights Committee, Sixteenth session, 1982, U.N.-Doc. HRI/GEN/1/Rev.6 at 127, General Comment No. 6: The Right to Life.
2. Human Rights Committee, Sixty-second session, U.N.-Doc. E/CN.4/2006/44, 16 March 2006: "Report of the Special Rapporteur on the right to food, Jean Ziegler".
3. Human Rights Committee, Thirty-seventh session, U.N.-Doc. A/45/40, 10 November 1989 General Comment No. 18: Non-discrimination.

Other

1. International Commission of Jurists, *Limburg Principles*.
2. International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, Annex to GA-Res. 56/83.
3. Johannesburg Plan of Implementation of the World Summit on Sustainable Development, in Report of the World Summit on Sustainable Development, Johannesburg, South Africa, August 26 to Sept. 4, 2002, UN Doc. A/CONF.199/L.1, available at:
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf.
4. Preliminary observations as of 24 April 2007 by the United Nations Special Rapporteur on adequate housing, Mr Miloon Kothari in light of his mission to South Africa (12 April – 24 April 2007) available at <http://abahlali.org/files/preliminary%20obs%20rev.pdf>.
5. Press Release, Joint Statement by the Special Rapporteur on Right to Housing, Special Rapporteur on Right to Food, and Special Rapporteur on the highest attainable standard of physical and mental health under the Commission on Human Rights, Third World Water Forum, 17 March 2003, *available at*
[http://www.unhcr.ch/hurricane/hurricane.nsf/\(Symbol\)/HR.03.22.En?OpenDocument](http://www.unhcr.ch/hurricane/hurricane.nsf/(Symbol)/HR.03.22.En?OpenDocument).

South African Human Rights Commission, Response to Call for Comments by the Department of Water Affairs and Forestry, Directorate: Water Allocation on a Draft Position Paper for Water Allocation Reform in South Africa, May 2005, available at:
http://www.sahrc.org.za/sahrc_cms/downloads/Water%20Allocation_May.doc

Books and Articles

1. Aust Modern Treaty Law and Practice (Cambridge, CUP, 2000)

2. Bartram & Howard Domestic Water Quantity, Service Level and Health (Geneva: World Health Organization, 2003) 22.
3. Buffard & Zemanek "The 'Object and Purpose' of a Treaty: An Enigma?" 3 *Austrian Review of International and European Law* 332 (1998).
4. Cheng General Principles of Law as Applied by International Courts and Tribunals (Cambridge, CUP, 1953)
5. Craven The International Covenant on Economic, Social and Cultural Rights (Clarendon, Oxford, 1995)
6. D Bilchitz "Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance" (2002) 119 SALJ 484.
7. Disease Control Priorities Project "Water, Sanitation, and Hygiene: Simple Effective Solutions Save Lives"
8. Dugard International Law: A South African Perspective 3 ed (Juta, Cape Town, 2005)
9. Edward Cottle and Hamed Deedat, The Cholera Outbreak: A 2000-2002 Case Study of the Source of the Outbreak in the Madlebe Tribal Authority Areas, uThungulu Region, KwaZulu-Natal; See also Jeter, South Africa's Driest Season, in: Mother Jones, November/December 2002, http://www.motherjones.com/news/feature/2002/11/ma_145_01.html.
10. Gleick "Basic Water Requirements for Human Activities: Meeting Basic Needs" *Water International* 21, 83 – 92 (1996).
11. Guy Hutton and Lawrence Haller Evaluation of the Costs and Benefits of Water and Sanitation Improvements at the Global Level (Geneva: World Health Organization, 2004)
12. J Dugard "The Role of International Law in Interpreting the Bill of Rights" (1994) 10 SAJHR 208 have proved unfounded.
13. J M Jones Full Powers and Ratification: A Study in the Development of Treaty-Making Procedure (1949)
14. J M Picolotti "The Right to Water in Argentina", *Rights and Humanity*, 2003 available at: http://www.righttowater.org.uk/pdfs/argentina_CS.pdf.
15. Jan Klabbers, *How to Defeat a Treaty's Object and Purpose Pending Entry into Force: Towards Manifest Intent*, 34 *Vand. J. Transnat'l L.* 283 (2001)
16. Kidd, M "Not a drop to drink: Disconnection of Water Services for non-payment and the right of access to water" 20 SAJHR (2004) 127.

17. Klabbers "Some problems regarding the object and purpose of treaties" 8 *Finnish Yearbook of International Law* 155 (1997)
18. M Mendelson in Lowe and Fitzmaurice (eds.), *Fifty Years of the International Court of Justice* (1996)
19. Scott & Alston "Adjudicating Constitutional Priorities in a Transnational Context: A Comment on *Soobramoney's* Legacy and *Grootboom's* Promise" (2000) 16 SAJHR 206
20. Sir Humphrey Waldock, *Fourth Report on the Law of Treaties*, [1965] 2. Y.B. Int'l L. Comm'n 3, 43-45, U.N. Doc. A/CN.4/SER.A/1965/Add.1
21. T J Bollyky "R if C > B + P: A Paradigm for Judicial Remedies of Socio-Economic Rights Violations" (2002) SAJHR 161, 184.
22. The Case for Water and Sanitation (The Water and Sanitation Program, 2004)
23. The Coalition Against Water Privatization, the Anti-Privatisation Forum, and Public Citizen, "Nothing for Mahala," Centre for Civil Society Research Report No. 16, April 2004.
24. "Water, poverty and productive uses of water at the household level", Symposium in Johannesburg 21 – 23 January 2003 (Foreword by Minister Kasrils)