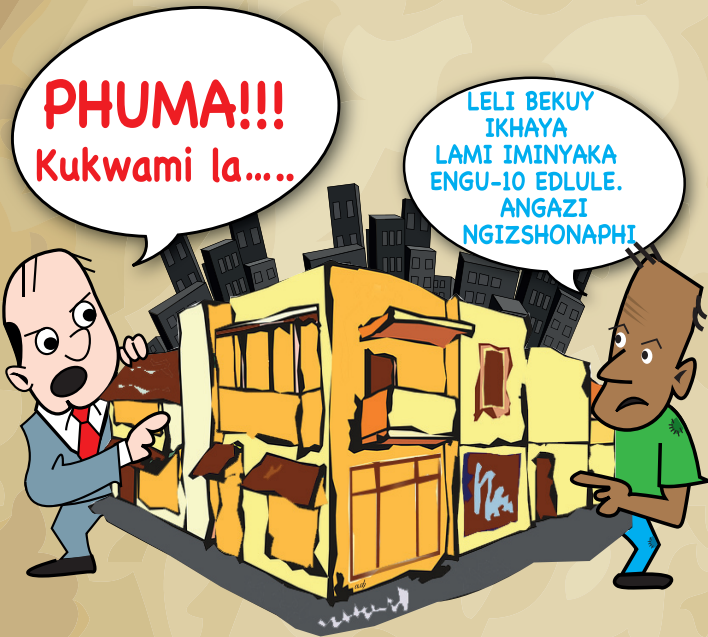




CALS

Centre for Applied
Legal Studies

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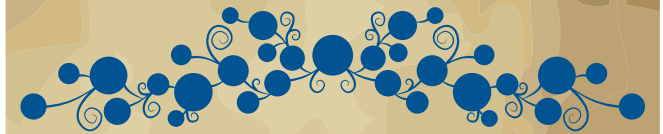
Leliphepha libe umphumela ngenxa yomusa

nosizo oluvela ku

Foundation for Human Rights



FOUNDATION
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Housing & Evictions



Izindlu Nokukhishwa Kwabantu Ezindlini Abahlala Kuzo

1. Kungabe uthini umthetho ngamalungelo omuntu ngezokuhlala?

Ngokwenjwayelo, umthetho uthi sonke sinelungelo lokuba nekhaya esihlala kulona, nanokuthi labo abangenayo indawo yokufihla ikhanda, uhulumeni kufanele enze amalungiselelo okuthi nabo balithokozele leli lungelo lokuba namakhaya. Lawa masu kahulumeni angathatha eside isikhathi, kodwa ekugcineni, kufanele enze isiqinisekiso sokuthi wonke umuntu uyalithokozela leli lungelo lokuba nekhaya.

iSigaba 26(3) soMthethosisekelo waseRiphabhuliki yaseNingizimu Afrika siyasho ukuthi: "akekho umuntu okufanele akhishwe ekhaya lakhe, noma abhidizelwe ikhaya lakhe, kungaphumanga isinqumo senkantolo kulandela ukucutshungulwa yonke imibandela. Awukho umthetho ongavumela ukuthi abantu bavee bakhishwe nje emakhaya abo".

Ngokuhambisana noMthetho oVimbela Ukukhishwa Kwabantu kanjalo Nokuhlala Emhlabeni Ngokungekho Emthethweni we-1998, i-Prevention of Illegal Eviction From and Unlawful Occupation of Land Act of 1998 ("PIE"), umninimhlaba noma owubhekele angaziqala izinyathelo zokumkhapha ohlala ngokungekho emthethweni.

2. Kungabe umthetho uyabavikela abakhishwa ezindlini ngokungekho emthethweni?

UMthethosisekelo uthi angeke umuntu akhishwe endlini uma kunganqumanga inkantolo nanokuthi angeke ikhaya lomuntu libhidizwe awogandaganda kungaphumanga sinqumo senkantolo. Lesi sinqumo senkantolo kufanele sikhishwe kuphela emveni kokuba inkantolo isicubungule zonke izimo; okumbandakanya izimo zomuntu okhishwa endlini.

UMthethosisekelo uthi futhi awukho umthetho ongavumela ukuthi kukhishwe umuntu endlini ngaphandle kwesinqumo senkantolo.

3. Ubani ongxosha abantu endaweni yokuhlala?

Umthetho uthi umninindawo kuphela noma umbheki ndawo ongay enkantolo athi ufuna inkantolo imvumele ukuba asuse abantu abahlala kuleyo ndawo.

4. Luhanjiswa kanjani ke lona uhlelo lokukhishwa kwabantu endaweni?

Umthetho uyabavikela abantu ekuxoshweni endaweni kungaphumanga isinqumo senkantolo.

Umthetho uthi umninindawo noma umbhekindawo kufanele abhale isaziso asinikeze abantu afuna ukubaxosha endaweni abanike izinsuku ezii-14 phambi kokuthi udaba aluyise enkantolo. Isaziso kufanele sibe nale mininingwane elandelayo:

1. Kufanele sisho ukuthi umuntu noma abantu abahlala kuleyo ndawo bayasuswa;
2. Kufanele sisho usuku nesikhathi okuzoyiwa ngaso enkantolo maqondana nalolu daba;
3. Kufanele sinikeze izizathu zokukhishwa komuntu noma abantu endaweni; futhi
4. Kufanele sisho ukuthi umuntu noma abantu abasuswayo kuleyo ndawo bangathola usizo lwezomthetho ukuphikisa inyathelo lokubasusa. Kufanele sibuye simtshale umuntu noma abantu abasuswayo kuleyo ndawo ukuthi banelungelo lokuthola usizo lwezomthetho.

iSigaba 4 soMthetho i- PIE

5. Yiwaphi amaphuzu abukwa inkantolo uma izokhipha isinqumo ngokususwa kwabantu endaweni?

Uma umuntu noma abantu sebhale endaweni isikhathi esingangezinanga ezi- 6 noma ngaphezulu futhi bengenayo indawo abazosuka baye kuwo, umasipala unesibopho sokubahlinzeka ngendawo yesikhashana yokufihla amakhanda. Inkantolo kufanele ibukise isimo somuntu noma abantu ababhekene nokusiswa endaweni. Inkantolo kufanele ibheke futhi nokuthi kungabe abasuswayo banemindeni eyondliwa abesimame/omama, nokuthi kunezingane yini, abantu abadala noma abakhubazekile.

6. Ngingaya kuphi ukuthola usizo lwezomthetho?

Ziningi izinhlangano ezingasiza umuntu noma umphakathi mahhala ukuba baphikise ukusiswa endaweni. Izikhungo zemfundo ephakeme ezehlukahlukene zinawo umnyango wezomthetho ongasiza kulokhu. Ezinye izinhlangano, ezifana no-CALS, LRC no- SERI nazo zingasiza.

7. Kungabe izinkantolo sezike zathatha izinqumo ezinjani phambilini mayelana nokusiswa kwabantu ezindaweni abahlala kuzo?

Ziningi izindaba ezilethwe ezithebeni zenkantolo ngoba abantu bengenayo imali yokukhokhela izidingo-ngqangi njengezindlu, amanzi, izindlu zangasese, kanye nokuya esibhedlela ukuyokwenza ukuhlinzwa okubizayo. Uma izinkantolo zithatha isinqumo ngodaba, ziye zikhiphe izizathu zokuthi kungani kuyisinqumo esifanele ukusiswa kwabantu endaweni. Sonke kufanele sizamukele lezi zinqumo ngoba, kuyenzeka kwenye inkathi uma kuwudaba oluphakathi kwakho no Zwane ngenxa yokuthi uZwane ekuntshontshele izicathulo, uma inkantolo inguma ukuthi u-Zwane kufanele ukuthi akubuyisele izicathulo zakho, inkantolo izozibhala izizathu ezenze ifinyelele kuleso sinqumo. Ngakho-ke, uma u-Mofokeng entshontsha izicathulo zika-Xolani, siyazi ukuthi uma entshontshe njengoba noZwane wathatha izicathulo zakho, inkantolo izothi akazibuyisele kuXolani isebenzisa izizathu ezifanayo. Lokhu kubizwa nge-precedent, okusho ukuthi kuye kusetshenziswe izizathu ezinikezwa inkantolo ngesinqumo esithathile ukuze lokho kusize ekuthathweni kwesinqumo secala elithi alifane nalo esikhathini esizayo.

Umthetho ophathelene nokukhishwa kwabantu ezindaweni usuthuthuke ezinkantolo wakhelwa umlandu yilawa macala alandelayo:

Ngowezi-2000, odabeni olwalubizwa nge-Government of the Republic of South Africa v Grootboom and Others, iNkantolo yoMthethosisekelo, okuyiNkantolo ephakeme kunazo zonke ezweni, yathi isu likaHulumeni lokuhlinzeka umphakathi ngezindlu kudinga libhekele izidingo zomphakathi. Futhi, inkantolo yathi uHulumeni kufanele abe nesu eliqotho ukubhekana nodaba lwezindlu futhi kufanele uthathe izinkinga zezindlu ngendlela yokuthi angakukhohlwa ukwahluka kumphakathi, ukwahluka kubantu ngokwezimali nokwahluka ngokomlandu wethu.

Ngowezi-2008, iNkantolo yoMthethosisekelo odabeni lwase-Olivia Road yakubeka kwacaca ukuthi kufanele kube khona 'ukubonisana okunomqondo' phakathi kukahulumeni nomphakathi othintwa yilokho kususwa endaweni. Lokhu kusho ukuthi umphakathi nohulumeni (umasipala) kufanele bakhulumisane, badingide okungayizixazululo bathole isu elisebenzayo. Inkantolo ithe umasipala kufanele uthintane nomphakathi ukuze uqonde izimo zabantu ngokwezimali nangokwendlela yokuphila. Inkantolo yabuye yathi uhulumeni kufanele athole indlela yokuhlinzeka umphakathi ngenye indawo, futhi akwenze loku esebenzisa imithombo anayo.

Ngowezi-2009, iNkantolo yoMthethosisekelo odabeni oluthiwa yi-Residents of Joe Slovo yathi uma uhulumeni ekhipha abantu, inkantolo kufanele ibheke ukuze ibone ukuthi uhulumeni wayefanele yini uma eqala lelo nyathelo lokususa abantu.

Ngowezi-2011, kwaba khona udaba olusemqoka lwaseNkantolo Yomthethosisekelo oluphathelelele nokuxosha kwabantu endaweni. Lololu daba kwakuthiwa yi- City of Johannesburg v Blue Moonlight Properties. Kulolu daba iNkantolo yoMthethosisekelo yathi isu lezindlu laseDolobhakazini laseGoli (umasipala) lalingahambisani nomthethosisekelo ngoba alibabhekela abantu ababhekene nokukhishwa ezindaweni zabo ngohlelo oluphuthumayo lwezindawo zesikhashana. Inkantolo ibuye yathi iDolobhakazi laseGoli (umasipala) linesibopho sangokomthethosisekelo sokuhlinzeka abantu abakhishwa ezindaweni zokuhlala ngezindawo zesikhashana. Leli kube yizwi lokugcina elikhishwe iNkantolo yoMthethosisekelo maqondana nokukhishwa kwabantu ezindaweni zabo.

8. Uma sesiphumile isinqumo senkantolo sokuthi ngisuswe endaweni ngingayaphi?

Umasipala unesibopho sokuhlinzeka indawo yokuhlala yesikhashana. Abantu abangenayo indawo la bezoya khona akufanele bakhishwe kuze kube iDolobhakazi (umasipala) sekebahlinzekele ngendawo yesikhashana yokuhlala.

9. Zindawo zini ezihlinzekwe yiDolobhakazi laseGoli (umasipala) ukuthi lhlalise kuzo abantu okwesikhashana?

Umaisiqalile inkambiso yokuthi abantu basuswe endaweni, umuntu noma abantu abazodinga indawo yesikhashana kuhulumeni bese beyobhalisela iPhekheji Eluliwe Yomphakathi. Kuya ngezidingo zomuntu, umuntu anganikwezwa indawo eflethini lapho ezokhokha khona irenti kuya ngokuthi imalini akwazi ukuyikhokha. Uma umuntu engezukwazi ukurenta, anganikwa indawo kwi-shelter.

10. Uma nginganikezwanga incwadi yenkantolo kepha ngikhishwe ngesankahlu noma ikhaya lami licekelwe phansi, ngingenze njani?

Kuyaphambana nomthetho ukucekelwa phansi kwekhaya lomuntu noma ukuba umuntu anqatshelwe ukungena ekhaya lakhe kungaphumanga sinqumo senkantolo. Uma lokhu kwenzeka, umuntu noma abantu abathintekayo kumele bathole ummeli ukuthi bayise udaba enkantolo ngokuphuthumayo ukuze babuyiselwe amakhaya abo. Kubaluleke kakhulu ukuthi umuntu athole ummeli emveni kwamahora ambalwa nje ikhaya lakhe licekelwe phansi noma emveni kokuthi enqatshelwe ukuthi angene ekhaya lakhe.



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