

Why Cape legal twist looks like a demolition of justice for poor

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IN MAY, backyard shack-dwellers with no access to formal housing took their case against the City of Cape Town to the Western Cape High Court. They were represented by the law firm, Smith Tabata Buchanan Boyes, which took on the case at a substantially reduced rate at the request of the South African Council of Churches (SACC).

The backyarders belong to Abahlali baseMjondolo, a national shack-dwellers' movement with its base in Durban. They had occupied an empty piece of land in Macassar Village, on which they erected shacks, in mid-May. However, the City of Cape Town's Anti-Land Invasion Unit, together with the police, demolished their structures and confiscated their materials.

Abahlali won the first phase of its battle when it secured an urgent interdict against the city, preventing the demolition of any shack or structure at Macassar Village without an order of court. It also compelled the city to return to the occupiers all building materials that were illegally confiscated. However, the city defied the interdict and continued demolishing shacks and confiscating building materials.

Then, on June 18, the city wrote to Smith Tabata Buchanan Boyes, terminating all the city's contracts for legal work with the firm. The letter from the director of legal services notes: "It has come to our attention that whilst acting on behalf of the City of Cape Town ... you also acted for a third party against the city. The city is therefore terminating its mandate with your firm."

It is widely understood, including by lawyers at Smith Tabata Buchanan Boyes, as well as by the Rev Siyabulela Gidi of the SACC, that the Abahlali intervention was the reason for the termination. While city administrations are clearly entitled to contract with whichever legal firm they choose, if it is true that the city terminated the contract because the law firm took on the Abahlali matter, this raises concerns about the future of pro-poor litigation at private law firms.

Currently, most law firms provide some degree of legal representation to people and organisations that cannot afford normal legal fees. Indeed, it is envisioned in the Legal Services Charter that in order to advance access to justice for the poor, private attorneys should all contribute to making justice more accessible to low-income and marginalised groups.

Many law firms that provide such legal representation to poor people and associated organisations do so against the state. This is because, in most instances, the obligations to provide access to housing, water, healthcare, etc, lie with the state. At the same time, such law firms often also represent state institutions.

In some instances there could be obvious direct conflicts of interest. For example, a law firm representing a municipality in an eviction application clearly cannot also represent the people under threat of eviction. However, there is no conflict of interest merely because a law firm represents a city in other general matters, while also representing a third party against the city in a specific, and completely unrelated, matter. If this were the case it would mean no law firm that does work for the state can ever take on socioeconomic rights-related work on behalf of poor people and grassroots organisations.

According to Smith Tabata Buchanan Boyes lawyer Vusi Matikinca, at a workshop for the city's panel of legal firms chaired by the city's director of legal services in May last year, a question was raised about whether law firms could take specific cases against the city while acting for the city. The director said this was not a problem. Yet the firm is now branded as "unethical" by the city, when in fact it should be praised for taking on a pro-poor case at a reduced rate.

If the City of Cape Town's termination relates to the Abahlali matter, this is a very worrying precedent. If reproduced across other law firms and in other municipalities, it would be a devastating blow to pro-poor litigation and would substantially undermine the government's objective of securing access to justice for all.

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