CONSTITUTIONAL COURT OF SOUTH AFRICA

MM Mphela and Others v Haakdoornbult Boerdery CC and Others

CCT 42/07
Medium Neutral Citation [2008] ZACC 5

Date of Judgment: 8 May 2008

MEDIA SUMMARY

The following media summary is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in an application by the Mphela family for leave to appeal against the decision of the Supreme Court of Appeal (SCA), in a case which concerns the restitution of land due to past discriminatory laws and practices.

In 1913 Mr Klaas Phali Mphela purchased a farm, known as Haakdoornbult, situated on the banks of the Crocodile River in the now Limpopo Province from a white farmer and obtained full title. He died in 1932 and the farm was awarded to his eldest son, Mr Daniel Mphela, who in turn gave undisturbed right "to live and reside" on the farm to his siblings and their families, as well as to use and cultivate it. Due to persistent pressure from the Government at the time and some white citizens to move from the farm, which was situated in a so-called white area, to another farm, Pylkop, 18 kilometers away from Haakdoornbult, the Mphela family resolved in April 1950 to move. Pylkop, which was owned by the South African Native Trust at the time, was substantially larger than Haakdoornbult and was valued at a price higher than the claimed farm at the time. It was destined to be incorporated into then Bophuthatswana.

Mr Daniel Mphela died in March 1951 and Mr Johannes Mphela, the executor of the estate, sold Haakdoornbult to two white brothers, for an amount equal to the value of Pylkop. The brothers started to conduct some irrigation farming on the land. In November 1953 Johannes Mphela concluded an agreement with the Secretary of Native Affairs, Hendrik Verwoerd, for the purchase of Pylkop. After some resistance from members of the family against the agreements of sale, both agreements were confirmed by an order of court in April 1961. During August 1962 the Mphela family was forcibly removed from Haakdoornbult and relocated to Pylkop, which was registered in the name of the deceased estate of the late Daniel Mphela.

In 1999 the applicants – the descendants of Mr Klaas Phali Mphela – claimed the return of Haakdoornbult in terms of the Restitution of Land Act. Although the Department of Land Affairs initially opposed the claim, it later withdrew its opposition and did not persist on the return of Pylkop in exchange for Haakdoornbult. The Land Claims Court (LCC) granted the applicants' claim and held that the family was entitled to the return of the entire Haakdoornbult, which had by then been subdivided into four portions and incorporated into adjoining farms. It held that for various reasons it was not just and equitable to order the return of the "compensatory land", namely Pylkop.

The respondents – the owners of three of the four subdivided portions of the farm – appealed to the SCA against the order of the LCC. The SCA confirmed the order of the LCC in respect of three of the four portions and upheld the appeal in respect of the remaining portion. The Court held that the return of the remaining portion would amount to over-compensating the family and that partial restoration would be a just and equitable remedy for the applicants. It also ordered that the matter be remitted to the LCC to consider whether and how the applicants are to contribute to the acquisition of the restituted portions of the farm from the current owners.

The applicants sought leave to appeal in this Court against the partial restoration of the farm and the remittal order. The owners of two of the portions (the respondents before this Court) also sought leave to cross-appeal against the order of the SCA in so far as it confirmed the partial restoration to the applicants. This cross-appeal was conditional upon the granting of leave of the main appeal.

Mpati AJ, writing for a unanimous Court, stated that the applicants had not made out a sufficient case for this Court to interfere with the SCA's exercise of its discretion in the matter of the partial restoration. This Court therefore refused leave to appeal, which in turn disposed of the respondent's conditional application for cross-appeal.

Mpati AJ also considered the part of the SCA's order which remitted the matter to the LCC for determination of whether and how a contribution should be made by the applicants to the acquisition by the State of the restored properties. He held that the remittal process would unnecessarily prolong the finalisation of the matter. The State had already indicated that it did not seek any contribution from the applicants. Furthermore, the SCA did not find as a fact that the return of three of the four portions of the land claimed amounts to over-compensation. Rather, it held that the return of the whole farm would amount to over-compensation. Mpati AJ found that these were relevant factors to which the SCA did not properly direct itself, hence the interference by this Court regarding the exercise of its discretion. He set aside that part of the remittal order.

This Court therefore granted leave to appeal on a limited basis by setting aside a part of the order of the SCA and striking the cross-appeal from the roll.