



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Mighty Solutions CC t/a Orlando Service Station v Engen Petroleum Ltd and Another**

**CCT 211/14**

**Date of hearing: 11 August 2015**

**Date of judgment: 19 November 2015**

---

#### **MEDIA SUMMARY**

---

*The following explanatory note 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 a matter concerning whether an aspect of the law of lease requires development in light of the Constitution.

Mighty Solutions, the applicant, is a licenced petroleum retailer under the Petroleum Products Act (Act). The respondent, Engen Petroleum Ltd, is a wholesaler and distributor of petroleum products to a nationwide network of independently operated and owned dealers, who operate Engen branded service stations. In September 2005, Engen and Mighty Solutions concluded an operating lease in terms of which Engen sublet certain premises to Mighty Solutions for the purposes of operating an Engen-branded service station. This operating lease was in fact a sub-lease as Engen was itself a lessee under a main lease.

Following the termination of the main lease, Engen applied for an eviction order against Mighty Solutions, who had continued to operate a petroleum retail business from the premises using Engen's equipment and signage. The High Court granted an order in favour of Engen on the basis that a lessor or sub-lessor has a common law right to evict a lessee or sub-lessee upon the valid termination of the lease. It further held that the Act did not affect this fundamental common law position. After being refused leave to appeal against this decision by the Supreme Court of Appeal, Mighty Solutions applied to this Court.

Before the Constitutional Court, Mighty Solutions argued that Engen had no standing to bring an eviction claim at common law because it had failed to prove that it was leasing the premises in terms of a valid agreement with the registered owner. It also argued that upon the cancellation of the sub-lease, Engen became unjustifiably enriched at Mighty Solutions' expense, giving rise to an enrichment lien and a right on the part of Mighty Solutions to retain possession.

Engen, on the other hand, argued that the High Court correctly found that a sub-lessee may not challenge a sub-lessor's right to occupy the property upon the termination of the lease. It contended that the alleged lien was raised after Mighty Solutions had been ejected from the premises, and therefore it no longer had any possession on which to base a lien.

The Constitutional Court found, in a unanimous judgment authored by Van der Westhuizen J, that the common law rule enforced by the High Court indeed gives Engen standing to evict Mighty Solutions. A lessee or sub-lessee, upon valid termination of a lease, cannot resist eviction on the basis that a lessor or sub-lessor has not proved a right to occupy the property. This rule serves a valuable purpose and is consistent with the spirit, purport and object of the Bill of Rights. It therefore ought not to be developed. The Court also refused to entertain Mighty Solutions' enrichment argument as a court of first and last instance. Accordingly, the application for leave to appeal was dismissed. Mighty Solutions was ordered to pay costs, including costs of two counsel.