



CONSTITUTIONAL COURT OF SOUTH AFRICA

City of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board

CCT 186/17

Date of hearing: 27 February 2018

Date of judgment: 7 June 2018

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.

On 7 June 2018, the Constitutional Court handed down a judgment in which it confirmed an order of the High Court of South Africa, Gauteng Local Division, Johannesburg (High Court) declaring section 9 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act) unconstitutional and invalid.

The confirmation had been sought by the City of Johannesburg Metropolitan Municipality (City). During June 2012 the City received an application for the erection of a cellular mast on a private property. Two owners of adjacent properties objected to the erection of the cellular mast, but the City granted approval in terms of the City's policy on the erection of cellular masts. The objectors were unhappy and took the City's decision on appeal to the National Building Regulations Review Board (Review Board).

The Review Board is an organ of state at the national level, established in terms of the Act. Section 9 of the Act subjects all decisions of a local authority, like the City, on matters of land use and building regulations, to an appeal to the Review Board.

In a unanimous decision by Jafta J, the Court held that Part B of Schedule 4 of the Constitution lists functional areas that fall within the executive authority of municipalities. These include building regulations and municipal planning. This meant that matters relating to these two functional areas are subject to the exclusive executive power of municipalities. When the City approved the building plans for the erection of the cellular mast the City was exercising these powers.

The Court ruled that it is impermissible for the national sphere to pass legislation which gives it power to exercise the executive authority of a municipality. While the national and provincial spheres may exercise their legislative and executive powers to enable municipalities to exercise their own powers and perform their own functions, they may not take over or arrogate to themselves and exercise the executive authority of a municipality.

For these reasons the Court confirmed the order of the High Court, that section 9 of the Act was unconstitutional and therefore invalid, to the extent that it empowers the Board to exercise appellate powers over decisions of a municipality. The Court ruled that the declaration of invalidity will only operate prospectively, and that any pending appeals will be decided under section 9 of the Act. However, with regards to the current appeal, the Court held that the decision of the municipality to grant the building permit to construct the cellular mast would stand. The High Court had declared this appeal void for other reasons and its order had not been challenged in this Court.