



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 20 September 2007

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

J VAN ZYL AND OTHERS v THE GOVERNMENT OF THE RSA

The appeal related to a claim for diplomatic protection, i.e., action by one state against another state in respect of an injury to the person or property of a national of the former state that has been caused by an international delict that is attributable to the latter state.

The appellants requested the Government of the RSA to provide them with diplomatic protection against the Government of Lesotho. The international delict on which they relied was the cancellation and revocation of five mineral leases that had been granted by the Government of Lesotho.

The President of the RSA was advised that the Government was under no obligation to afford diplomatic protection to the appellants; that any decision to intervene would involve a policy and not a legal decision; that the decision is the sole prerogative of the Government; that the disputes between the appellants and the Government of Lesotho had been decided by the Lesotho courts; that mediation or intervention by the Government would imply a lack of faith in the judicial system of a sovereign state; and that diplomatic intervention would set an unhealthy precedent. The President in the result refused to accede to the appellants' request and they were informed that they were not, in the circumstances of the case, entitled to diplomatic protection.

Dissatisfied with this ruling, the appellants sought to review the Government's decision. They also applied for an order directing the Government 'to take all steps necessary to vindicate the rights of the applicants, including but not limited to providing diplomatic protection.' The application was heard by Patel J in the Pretoria High Court. He dismissed the application.

The judgment holds that the appellants have no right under South African law to diplomatic protection, especially not in respect of protection of a particular kind. Nationals have a right to request Government to consider diplomatic protection and Government has a duty to consider it rationally. Government received the request, considered the matter properly and decided to decline to act on rational grounds. The judgment further holds that the Government was not entitled under international law to afford the appellants diplomatic protection under the particular circumstances of the case. Accordingly, the appeal was dismissed with costs.

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