



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL**

23 September 2011

STATUS: Immediate

**EMFULENI RESORTS V MAZIZINI COMMUNITY (655/2010) [2011]
ZASCA 139 (23 September 2011)**

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

Today the Supreme Court of Appeal (SCA) struck from the roll an appeal by the appellants and remitted the matter to the Land Claims Court for adjudication. The SCA also dismissed, with costs, an application by the Regional Land Claims Commissioner (the third respondent) to have the appeal postponed.

The salient issues before the SCA were whether the award granted to the first respondent (the Mazizini Community) in the Land Claims Court (LCC) were appropriate, in light of a competing claim by another community (the Prudhoe Community), and secondly whether the third respondent was entitled to a postponement of the appeal.

The first and second appellants owned land which comprised the Fish River Sun Hotel Complex. The first respondent brought an application in the LCC for the restoration of the disputed land, which the LCC granted. The appellants thereafter appealed to the SCA for a compensatory award to be made in their favour. Prior to the hearing of this appeal the Prudhoe Community, not party to the proceedings in the LCC, lodged an application to the SCA, praying for the rescission of the order of the LCC; the remittal of the matter of both parties to the LCC for re-adjudication and an order directing the second and third respondents to pay the costs of the application. Prior to the commencement of argument, the third respondent brought an application for the postponement of the appeal and the rescission application. The reason tendered by the third respondent was that it needed time to determine the validity of the application by the Prudhoe Community. The claims of both the Mazizini and Prudhoe communities were lodged more or less at the same time with the third respondent. The third respondent only attended to the claim of the Mazizini Community, completely disregarding that of the Prudhoe Community. The representatives of the third respondent were unable to provide any plausible explanation for their neglect of the Prudhoe Community's claim some 13 years ago.

In arriving at their decision, the SCA stated that the Restitution of Land Rights Act 22 of 1994, makes provision for the third respondent to take reasonable steps to ensure that claimants are assisted in the preparation and submission of claims. The third respondent failed to adhere to this provision and as a result the claim of the Prudhoe Community was neglected. The third respondent, in addition, failed to establish valid grounds for the warranting or justification of a postponement.

The appellants contended that the Prudhoe Community had made out an arguable case and as such were entitled to have their claim duly considered by the Land Claims Court. The SCA was in agreement. The appellants did not oppose the Prudhoe Community's application for the rescission and remittal of the matter and considered the relief sought appropriate in light of the circumstances. The appellants argued that had the third respondent properly investigated initially, the parties would not have found themselves in this position. The application by the Prudhoe Community was opposed by the third respondent who maintained that their claim was not validly lodged. The SCA found that it was not for them to make a determination regarding the validity of the claim; this was a matter for the LCC to decide. The SCA held that the Prudhoe Community has at the very least a potential claim on the very land in respect of which the LCC granted a restoration order. Neither the LCC, the appellants nor the respondents were appraised of the competing claim of the Prudhoe Community, it was the responsibility of the third respondent to bring this to their attention, which it failed to do.

The SCA in striking the appeal from the roll, stated that it was not in the interests of justice to have the appeal postponed. It held that it would be in the interests of all parties concerned to have the order of the LCC set aside and remitted to the LCC for reconsideration. The SCA further held that the application by the Prudhoe Community for the rescission of the judgment of the LCC, be upheld and ordered the costs of the appeal and the proceedings before the LCC be paid by the third respondent as it neglected to perform its statutory duties appropriately.