



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 19 January 2018

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.

Mandela v The Executors, Estate Late Nelson Rolihlahla Mandela & others (131/17) [2017] ZASCA 02 (19 January 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the costs order granted by the Eastern Cape Local Division, Mthatha and dismissed the appeal regarding the review application in a matter involving the late Mr Nelson Rolihlahla Mandela (Mr Mandela) and Mrs Nomzamo Winifred Madikizela Mandela, the appellant.

The primary issues on appeal were whether the court a quo was correct to dismiss the appellant's review application with costs on the basis that she unreasonably delayed to launch an application, and whether that delay should be condoned. A further issue was whether the court was justified to mulct the appellant with costs given the nature of the litigation.

The facts of the matter were: On 16 November 1997, the third respondent, the Minister of Land Affairs for the Republic of South Africa (the Minister), took a decision to donate property to Mr Mandela. Mr Mandela later bequeathed that property to the Nelson Rolihlahla Mandela Family Trust (the Trust) to administer for the benefit of the Mandela family, his third wife, Ms Graca Machel, and her two children. On 14 October 2014 the appellant instituted review

proceedings in which she sought an order declaring the Minister's decision to donate the property null and void; alternatively, reviewing and setting aside that decision and ancillary relief. The court a quo dismissed the review application mainly on the basis that there was an unreasonable delay which resulted in severe prejudice to the respondents.

Relying on the principles set in *Associated Institutions Pension Fund & others v Van Zyl & others* 2005 (2) SA 302 (SCA), the SCA adjudicated the Minister's administrative action in terms of the common law and not the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In line with these principles, the SCA held that in respect of judicial and administrative decisions and litigation in general, it is desirable and in the public interest that finality be reached within a reasonable time. It affirmed the long-standing rule that courts have the power, as part of their inherent jurisdiction, to regulate their own proceedings. This enables them to refuse a review application if the aggrieved party is guilty of unreasonable delay in initiating the proceedings. In view of the facts, the SCA agreed with the court a quo that there was an unreasonable delay by the appellant to institute the review proceedings.

In respect of the application to have the delay condoned, the SCA held that a reasonable person in the position of the appellant would have asserted a right to ownership of the property before Mr Mandela's death. It found that the appellant's delay was prejudicial to Mr Mandela's estate and heirs because his version of events was not available. It thus refused the application for condonation.

Regarding the issue of costs, the SCA found that the litigation implicated the constitutional principle of legality as well as the appellant's rights to property. Consequently, it applied the principles laid in *Biowatch Trust v Registrar, Genetic Resources & others* 2009 (6) SA 232 (CC) and concluded that the appeal must succeed on the costs issue against the Minister and ordered that each party pay its own costs. However, as regards the first respondent and the appellant, it held that these are private persons acting in their private capacities. In this respect, it held that the *Biowatch* principles are not applicable and the appellant is ordered to pay the first respondent's costs including costs of two counsel.