

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: 28 November 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.

Community of Grootkraal v Kobot Business Trusts

The SCA today upheld an appeal by the Community of Grootkraal that they had a public right to make use of a small portion of the farm Grootkraal, near the entrance to the Cango Caves outside Oudtshoorn, for church and related community purposes, including a school. At present the Grootkraal congregation, an outstation of the Grace International Church, worships on the property, which is also used by the Grootkraal UCC Primary School.

The Community claimed that it had used this portion of the farm from time immemorial, dating back to the middle of the 1800s, for religious purposes, following upon missionary work by the London Missionary Society. The main building on the property was erected by the Community at some time in the last two decades of the nineteenth century. It had been adapted for school use, in addition to its use as a church, in about 1930 or 1931, when the school was established. It had served both purposes ever since.

The Community contended that it had a right to use the property and the buildings on it for these purposes and that the right was established by immemorial user. It was therefore to be assumed that it had come into

existence in a lawful manner. The SCA held that it was for the owner of the property, which had sought the eviction of the school, to show that the right had come into existence in an unlawful manner, which it failed to do. The Court accordingly ordered the Registrar of Deeds to register a public servitude in favour of the Community to use the property, as defined in its order, for the purposes of a Christian church and any related community activities, including the conduct of a school.