



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Snowy Owl Properties 284 (Pty) Ltd v Mziki Share Block Limited (Case no 886/2021) [2023] ZASCA 2 (19 January 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against an order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court).

The appellant and the respondent own farms that border each other. This appeal revolved around a long-running dispute regarding a reciprocal servitude agreement (the agreement) that was concluded some years ago by their predecessors in title. The agreement reciprocally allows the appellant and the respondent to traverse the property of the other for game viewing. Each party is also responsible for ensuring that the roads in question are properly maintained.

The respondent instituted arbitration proceedings as the appellant had ripped up certain roads and blocked access to others, claiming that it was legally obliged to do so in compliance with national environmental laws. The dispute also included the failure by the appellant to maintain the roads in terms of the agreement. An arbitration award (the award) was made in favour of the respondent who subsequently approached the high court to have the award made an order of court. The application was opposed by the appellant. The high court dismissed all the grounds relied upon by the appellant in support of its contention that the award was unenforceable.

The primary question in this appeal was whether the high court was correct in making the award an order of the court. The appellant had, before the high court and the SCA, sought to introduce 'new expert evidence' from a report of an ecologist and an environmental assessment practitioner (EAP) to support its contention that para 1.3 of the award cannot be enforced, as it requires it to perpetuate unlawful acts prohibited by various environmental legislation, including the Maintenance Management Plan (MMP). Secondly, the appellant contended that para 1.4 of the award was vague and imprecise, as the appellant was unsure which sections of roads were subject to the

award. The last complaint was that paras 1.1, 1.2 and 1.3 conflict with the provisions of para 11.10 of the MMP and cannot be enforced. The appellant also sought leave to admit further evidence in terms of s 19(b) of the Superior Courts Act 10 of 2013.

In dismissing the appeal the SCA held that; the award met the requirements of an order that is capable of being enforced; the high court correctly rejected the introduction of the 'new expert evidence' in the affidavit of the EAP; the contention that the award will require the appellant to conduct illegal activities did not have merit because the award did not infringe any law; there was nothing vague and imprecise about what the appellant was required to do in terms of the award; any defence rooted on 'changed circumstances' could not make the award unenforceable, as the appellant's duty to maintain the roads was a servitudal obligation that takes into account the reserve's conditions, including rainfall. The SCA emphasised that the appellant was under an obligation to respect the terms of the agreement and the legal principles that govern the rights of the parties under it, which do not permit the appellant to make unilateral changes to the agreement. As a result, the last complaint suffered the same fate.

Lastly, the application in terms of s 19(b) of the Superior Courts Act was also dismissed, as the deed of registration documents sought to be introduced were found to be irrelevant to the tenor of the issues before the Court.

In the result, the appeal was dismissed.

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