



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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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.

Bertie van Zyl (Pty) Ltd and Another v The Municipal Manager of the Polokwane Local Municipality and Others
(645/2025) [2026] ZASCA 133 (02 October 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an application for leave to appeal against an order of the Limpopo Division of the High Court, Polokwane (the high court).

The second applicant, Doornbult 624 Boerdery (Pty) Ltd, is a subsidiary of the first applicant, Bertie van Zyl (Pty) Ltd, trading as ZZ2. The second applicant is the owner of portion 94 of the Farm Doornbult 624, an immovable property in the district of Polokwane, Limpopo. It leases portion 94 to the first applicant, who uses approximately 200 hectares of the 256,9596 hectares of portion 94 for the cultivation of tomatoes.

The municipality is the owner of portion 93 of the Farm Doornbult 624, which abuts portion 94. The Sand River runs north of portion 93, which lies between the Sand River and portion 94. The Sand River aquifer is an extremely valuable water resource in the Polokwane area. The municipality channels treated sewage water into the Sand River. The treated water replenishes the aquifer. That water is used by commercial farmers, including the applicants, in the vicinity of the Sand River, for the cultivation of agricultural products.

During 1966, a praedial servitude was registered over portion 93, which entitled the owners of portion 94 to construct a weir in the Sand River, abstract water from it and channel water by means of a pipeline over portion 93 to portion 94. The servitude was registered in favour of portion 94, the dominant tenement or land, over portion 93, the servient tenement or land.

During 2015, the applicants became aware that the municipality intended constructing a new wastewater treatment plant (the listed activity) on portion 93. They informed the municipality that the listed activity had the potential of damaging the pipeline along the servitude route and infringe on their right of servitude. Consultation between the municipality and the applicants culminated in an agreement between them to the effect that a new pipeline would be constructed by the municipality, also over portion 93, to channel water from the Sand River to portion 94, while allowing the municipality to construct the new wastewater treatment plant. The new pipeline has been constructed and is ready to be used. However, because of the breakdown in negotiations between the applicants and the municipality, the old pipeline has not been disconnected, and the new pipeline has also not been connected.

The applicants instituted an application in the high court to prevent damage to portion 94, the servitude and the servitude route. The high court dismissed the application, finding that the applicants failed to present evidence of actual harm that the alleged unlawful activities have caused to their business. Regarding the execution of the project relating to the alternative pipeline, the high court found that there was no reason to believe that the municipality would continue with the work while the dispute between the applicants and the municipality was still unresolved. The high court also found that, instead of instituting an application for an interdict, the applicants had another satisfactory remedy available, namely the institution of criminal charges against anyone who contravened the statutory provisions.

The SCA referred the application for leave to appeal for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013. This Court emphasised that leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason the appeal should be heard. In determining whether the applicants should be granted leave to appeal, this Court found that

the applicants did not rely on a compelling reason the appeal should be heard other than the contention that the appeal would have reasonable prospects of success.

The SCA granted the municipality's application to adduce further evidence about events which occurred after 28 January 2024, when the application was argued in the high court. The further evidence showed that the parties had further negotiations which culminated in the applicants agreeing to the relocation of the servitude line, on condition that they be permitted to see to the relocation and that the municipality should compensate them for doing so. The relocation of the pipeline has been completed, and the municipality has compensated the applicants therefor. The parties agreed that their agreement in that regard effectively means that the applicants' concerns about the disturbance, disruption or damage to the pipeline fell away. However, the enforcement controversy and the land use issue remain live issue between the parties.

Whether the applicants met the requirements for the granting of a final interdict lies at the heart of this application for leave to appeal. The high court had found that the applicants did not meet two of the three requirements for the granting of a final interdict and accordingly dismissed their application. This Court determined that for an applicant to succeed in obtaining an order for a final interdict, it must establish (a) a clear right enjoyed by the applicant; (b) an injury (harm) to that right or a reasonable apprehension that such a right would be injured (harmed); and (c) the absence of a satisfactory alternative remedy. Each of the three requirements must be met before a final interdict may be granted. It reiterated that the right sought to be protected by a final interdict, in contrast to an interim interdict, must be clearly established and the degree of proof of the right is accordingly higher in the case of a final interdict.

The SCA held that with regards to the first requirement, the finding of the high court that the applicants established that they have a clear right is beyond question. It further held that the submission that, since the issues relevant to the servitude were no longer disputed, the applicants had pleaded no facts upon which to ground any right which required protection, cannot be sustained. The applicants stated in their founding affidavit that they required the court to protect their right to the lawful use and development of portion 93 and that they have a clear right in the application and enforcement of the legislation administered by the municipality on portion 93.

With regards to the second requirement, the SCA found that the municipality seems to have breached or allowed the following and other pieces of legislation referred to by the applicants to be breached: the Polokwane Town Planning Scheme, 2016; the National Building Regulations Standards Act 103 of 1977; the National Environmental Management Act 107 of 1998; the Spatial Planning and Land Use Management Act 16 of 2013; the Polokwane Municipal Planning By-Law, 2017; the Environmental Impact Assessment Regulations, 2014; and the National Water Act 36 of 1998.

The SCA then held that the contravention of the statutory and other provisions does not in itself entitle the applicants to the interdictory relief that they sought. They were required to establish, by evidence, that the contravention of the above provisions caused harm to them or that they reasonably apprehended that such contravention would cause them harm. It is in that regard that the applicants fell short. The contravention of the legislation did not, without more, amount to harm to the applicants' rights nor could the applicants reasonably have apprehended that such contravention would harm their rights in respect of which they sought protection. The appeal would have no reasonable prospects of success and the application for leave to appeal should accordingly be dismissed with costs.

With regards to the third requirement, the SCA found that, by virtue of the drastic nature of an interdict, a court will not grant an interdict if the applicant has a satisfactory alternative remedy. The facts of each case will determine whether a remedy is satisfactory. Given the municipality's inaction to the applicants' letter of complaint requesting the municipality to take steps to prevent harm to the applicants and to enforce legislation did not afford the applicants, who were faced with ongoing contravention of statutory provisions, with a satisfactory alternative remedy. The SCA held that the applicants did not have a satisfactory alternative remedy and that the contrary finding of the high court cannot be supported.

The SCA accordingly concluded that leave to appeal be dismissed, the applicants pay the municipality's costs, jointly and severally the one paying the other to be absolved. The SCA was of the view that the issues involved did not warrant the award of costs of two counsel.

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