



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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Zincede Ngokwakho Housing (Pty) Ltd and Another v Matatiele Local Municipality (844/2024) [2026] ZASCA 17 (13 February 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal against an order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the High Court), which required the appellants, Zincede Ngokwakho Housing (Pty) Ltd (Zincede) and Stonewell Quarry (Pty) Ltd (Stonewell), to be evicted from a property owned by the respondent, Matatiele Local Municipality (the Municipality). Stonewell had occupied the property for mining operations.

The dispute arose from gravel mining on the property. In 2012, Zincede was granted a converted mining right under the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). The mining right took effect on 22 May 2012 and was to remain in force for ten years until 21 May 2022, unless cancelled or suspended. In 2016, following earlier litigation between the parties, Zincede and the Municipality entered into a settlement agreement and a lease governing the use of the land for the duration of the mining right. Zincede later ceded the mining right to Stonewell, a related company, with the Minister's consent, as required by the MPRDA.

Following the cession of the converted mining right, Stonewell considered itself the holder of rights under the lease, thereby replacing Zincede as the lessee. There was no formal cession of the lease agreement between Zincede and Stonewell. Before the mining right expired, Stonewell exercised an option in the lease to renew it. The Municipality refused to recognise the renewal and sought a declarator that no valid lease existed, as well as an eviction order against Stonewell, among other relief. The High Court held that the substitution of Zincede by Stonewell as lessee was a breach of the no variation clause in the lease agreement. The Municipality's written consent was required for Stonewell to assume the rights under the lease. Since there was no such written consent, Stonewell could not validly exercise the option to

renew the lease. Accordingly, the High Court issued an order declaring that there was no valid lease agreement between the Municipality and Stonewell. It also granted an eviction order.

In the SCA, there were two judgments. The first (a minority judgment) was written by Baartman JA. The minority would have disposed of the appeal only on the narrow basis that, as long as the mining right was valid, Stonewell was, without more, entitled to occupy the property for mining purposes. The majority judgment, written by Makgoka ADP, disagreed with that approach, holding that it ignored the clear legislative intent of s 5(3) of the MPRDA, which requires cooperation between the holder of a mining right and the landowner on whose property mining operations take place.

The majority identified the threshold legal question as follows: whether Stonewell validly assumed the rights under the lease upon Zincede's cession of the converted mining right to it. The majority emphasised that contractual rights are generally freely cessionable unless expressly restricted or *delectus personae* (inherently personal). After analysing the lease agreement, the majority found that the rights under the lease were not personal to Zincede and could therefore be ceded. Next, the majority considered whether a cession of the lease between Zincede and Stonewell could be inferred. Having considered the relationship between the two entities, the cession of the mining right and other commercial agreements they had concluded relating to the mining right, the majority concluded that there had been a tacit cession of the lease. Accordingly, the lease did not terminate upon cession, and Stonewell was entitled to exercise the option to renew it.

The Municipality also contended that, because there was no public participation as required under the Municipal Asset Transfer Regulations in relation to the property, the option to renew the lease could not be exercised. The majority also dismissed this submission, noting that the regulations required the Municipality to initiate public participation. It could therefore not rely on the absence of a public participation process in circumstances where it failed to do so.

Accordingly, the SCA upheld the appeal with costs and replaced the High Court's order with one dismissing the Municipality's application.

ENDS