



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 judgment of the Supreme Court of Appeal

Nelson Mandela Bay Metropolitan Municipality v Siyalanda Property Development (Pty) Ltd (789/2024) [2026] ZASCA 18 (20 February 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment in an application for special leave to appeal against the judgment of the full court of the Eastern Cape Division of the High Court, Makhanda (the full court), sitting as a court of appeal. The application for special leave was dismissed with costs.

The respondent, Siyalanda Property Development (Pty) Ltd (Siyalanda) is the owner of erf 3783 Summerstrand, Gqeberha (the property). On 13 September 2018, Siyalanda submitted its first Site Development Plan (SDP) for approval to the municipality in terms of regulation 11 of the repealed Port Elizabeth Zoning Scheme Regulations (the Scheme). The Nelson Mandela Bay Metropolitan Municipality Land Use Scheme 2023 (Integrated Scheme) issued in terms of Proclamation Notice 14 of 2023 and approved in terms of s 24(1) of the Spatial Planning and Land Use Management Act of 2013, came into effect on 11 September 2023 and replaced, amongst other schemes, the Scheme under consideration. Regulation 66 of the Integrated Scheme provides that open space is a requirement for developments such as the one under consideration, and that 24 m² of private open space is to be provided per dwelling unit. The Integrated Scheme does not have retrospective effect.

The first SDP provided for a development consisting of 420 residential units contained in 30 blocks of flats. In it, Siyalanda tendered and provided for 11 937m² open space. The municipality insisted on 16 884m².

On 2 October 2018, the municipality pointed out that various additional matters, unrelated to the provision of 'open space', must form part of the first SDP. On 10 April 2019, the first SDP was re-submitted with the additional information which had been requested. The municipality responded that Siyalanda was required to make provision for open space as provided for in regulation 9.3.1.2 of the Scheme.

On 7 August 2019, Siyalanda re-submitted the first SDP together with a revised second SDP. The second SDP provided for 25 residential blocks and complied with the municipality's stipulations regarding open space. In its covering letter, Siyalanda advised the municipality that should it approve the first SDP, that would be the end of the matter. However, should the municipality refuse to approve the first SDP (and even if it approved the second SDP), Siyalanda reserved its right to proceed with the development as reflected in the second SDP. Siyalanda made it clear that it did so under protest, and did not accept that the first SDP was non-compliant. It accordingly reserved the right to challenge that decision by way of a review in the high court. The municipality rejected the first SDP but accepted the second SDP.

The parties agreed that the final decision relating to the first SDP would be held in abeyance pending the court's decision on regulation 9.3.1.2 which held the key to unlocking the impasse (the interim

agreement). On 8 February 2022, the high court held that regulation 9.3.1.2 is applicable. It subsequently granted Siyalanda leave to appeal to the full court.

The full court's central finding was that the term "open space" in Regulation 9.3.1.2 of the Scheme refers to public open space, rather than private or communal space. It held that regulation 11.1.2 (x) of the Scheme 'the extent and position of any Open Space to be provided', should be interpreted to apply only to cadastral subdivisions envisaged under Part V of the Scheme dealing with subdivision of land and the property. It accordingly set aside the order of the high court.

Aggrieved by the order of the full court, the municipality applied to the SCA for special leave to appeal against that order. The application was referred for oral argument in terms of s 17(2)(d) of the Act.

The municipality contended that, in addition to the existence of reasonable prospects of success, there were two reasons that constituted special circumstances notwithstanding that the Scheme was repealed. First, there were more than 420 members of the public who were potential residents in the proposed development on the property who would be adversely affected should the judgment of the full court be allowed to stand. Second, there were other SDPs in respect of different developments which were submitted prior to the date on which the new Scheme came into effect and which were pending assessment. They would thus be affected by the judgment of the full court. The essence of the municipality's argument was that the appeal was of great importance not only to the parties but to the public and that, for this reason, special circumstances had been established.

The SCA rejected both the arguments. The SCA found, amongst other things, that the municipality had failed to establish that the full court judgment has a material impact for other developers as it claimed as they could simply withdraw their SDPs and re-submit new SDPs in terms of the Integrated Scheme which, it was common cause, would require less open space than was tendered by Siyalanda in the first SDP. This option was not open to Siyalanda due to the provisions of the interim agreement. The SCA rejected the contention of alleged prejudice to the 420 members. Plainly, by adopting the Integrated Scheme, the municipality considered that open space calculated in terms thereof would be adequate for developments such as that of Siyalanda. The Integrated Scheme requires a substantially reduced extent of open space (10 080m²) compared to that contended for under the Scheme (16 884m²).

The SCA then proceeded to examine whether the prospects (assuming, without deciding, that reasonable prospects exist) were so strong that a manifest injustice might result if special leave to appeal were to be refused.

The SCA held that it could not find that the full court was manifestly incorrect in concluding that the Scheme did not provide for the provision of open space for Siyalanda's development. The municipality had accordingly not met the stringent requirements set for special leave to appeal to be granted.

The SCA considered where this left the parties. It held that the municipality would be required to consider the first SDP without reference to regulation 9.3.1.2 of the Scheme as the full court had found that it had no application to the facts of this case and the SCA had refused special leave to appeal that decision. The extent of open space tendered and proposed by Siyalanda in respect of the first SDP was 11 937m². This extent was proposed by Siyalanda on the basis that regulation 9.3.1.2 did not apply. This was now effectively confirmed by the refusal of special leave. The parties were now required to fall back on the interim agreement, in terms of which the municipality would make a final decision regarding the extent of open space to be provided by Siyalanda having regard to the interim agreement and the finding that regulation 9.3.1.2 of the Scheme did not apply to the development.

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