



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

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NAD Property Income Fund (Pty) Ltd v The South African National Roads Agency SOC Limited and Another (710/2024) [2026] ZASCA 42 (1 April 2026)

Today the Supreme Court of Appeal (SCA) upheld the appeal of NAD Property Income Fund (Pty) Ltd (Nad) and dismissed the cross-appeal of the South African National Roads Agency SOC Limited (Sanral). This appeal is against the order granted in the Limpopo Division of the High Court, Polokwane (the High Court). The SCA remitted the matter to the High Court of the same division, for the hearing of further evidence and argument.

Nad, the appellant, was the registered owner of a property in Hoedspruit, Limpopo, which it purchased in January 2015 for R7 750 000. At the time of purchase, negotiations between Sanral and the previous owner regarding a possible expropriation were already underway, and a diagram of the portion Sanral might require had been made available to Nad. On 25 July 2016, the Minister of Transport, in terms of s 41 of the South African National Roads Agency Limited and National Roads Act 7 of 1998 (the Sanral Act) expropriated a portion of the property, measuring 5 101 square meters, at Sanral's request. Nad claimed compensation from Sanral compensation in terms of s 41(5) of the Sanral Act, read with s 12 of the Expropriation Act 63 of 1975 (the Expropriation Act).

Nad brought an action against Sanral in which, after an amendment to its claim, it sought compensation in an amount no less than R16 980 000. Sanral pleaded that it was liable to compensate Nad in an amount of R190 777.40. At trial, each party led expert evidence. Nad's experts testified that the highest and best potential use of the property before the expropriation was as a community shopping centre, and valued the loss in value caused by the expropriation at approximately R16 926 905.86. Sanral's experts did not accept the shopping centre potential and instead relied on the actual sale prices of the property, arriving at compensation of R1 617

017.00. On 19 January 2024, the High Court handed down its judgment. It awarded Nad compensation in the amount of R933 509,52, interest calculated from 25 July 2016 to the date of payment. Nad sought leave to appeal the whole of the judgment and order made by the High Court. Sanral cross-appealed the costs order.

Before the SCA, the central question was whether the high court applied the correct legal framework and reached a defensible determination of compensation. The SCA confirmed that compensation for expropriation requires a two-stage analysis: first, determining the amount payable under the Expropriation Act by reference to market value, and then determining whether that amount is just and equitable under s 25(3) of the Constitution. Market value is the presumptive starting point, not a subordinate consideration, and the constitutional enquiry follows from it. The SCA further held that the determination of just and equitable compensation is not the exercise of a true discretion, as the high court had held. Section 25(3) sets a defined constitutional standard that a court's decision must meet, and whether it does so is an objective question, subject to appellate review on the basis of correctness.

On market value, the SCA held that Nad's prior knowledge of Sanral's plans did not constitute a legal bar to the shopping centre as a potential use. The risk of expropriation proceeding was real, but so was the possibility that Sanral's plans might change or be deferred. The correct question was how that risk would have affected the price in a hypothetical negotiation between a willing buyer and seller. The SCA further held that the High Court asked the wrong question on financial viability: the relevant enquiry was not whether a shopping centre was commercially viable in 2016, but whether a hypothetical buyer would have attributed value to its future development potential.

Of the two actual sale transactions, the SCA held that both required proper analysis. The variance between the prices, when brought back to the date of expropriation, indicated different market prices at different times and required expert engagement and explanation. The high court found an apparent paradox because the property, after the expropriation, was sold for more than it was before the expropriation, which would mean no compensation. The high court sought to avoid this paradox by selecting one sale prices, without properly interrogating what the difference between the two achieved prices meant.

Because the resolution of the compensation question turned on expert evidence and numbers of issues had not been adequately engaged with the experts, the record did not permit the SCA to make its own determination, the matter had to be remitted to the High Court to hear additional evidence and argument.

On the cross-appeal, Sanral challenged the punitive costs orders arising from a late and ill-considered amendment application and from cross-examination that the High Court found to have been wasteful and purposeless over six trial days. The SCA found no basis to interfere with either order. The costs of suit were set aside as a consequence of the main appeal succeeding, to be reconsidered by the High Court at the conclusion of the remitted proceedings. The cross-appeal was dismissed with costs.

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