



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 7 February 2007

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

On 6 February 2007 in *CDA Boerdery (Edms) Bpk v The Nelson Mandela Metropolitan Municipality* [2007] SCA 1 (RSA), the Supreme Court of Appeal dismissed an appeal by a group of Port Elizabeth-area landowners who had objected to new rates the Nelson Mandela Metropolitan Municipality imposed for the financial years 2002–3 and 2003–4.

The landowners failed in their bid before the Grahamstown High Court, where Froneman J dismissed their application. Now the SCA has, by a majority, dismissed their appeal and confirmed the validity of the rates.

The landowners' principal argument on appeal was that the municipality had failed to obtain prior approval for the new rates from the Premier of the Eastern Cape Province. The requirement that consent be obtained from the Premier's predecessor, the Administrator, was contained in Cape Municipal Ordinance 20 of 1974. The majority of the SCA, in a judgment by Cameron JA (with whom Mpati DP, Mthiyane JA and Theron AJA concurred) held that the consent requirement was impliedly repealed when the new constitutional dispensation took effect. The majority based its finding on the constitutionally different and enhanced role municipalities enjoy under the Constitution. The municipality was therefore not obliged to seek the approval of the Premier.

In a dissenting judgment, Conradie JA held that the approval requirement still applied, and that the municipality's failure to obtain the Premier's consent invalidated the rates.

The majority of the SCA, like the Grahamstown High Court, dismissed also the landowners' other objections to the rates. These were that the rates sought to be levied violated s 229(2)(a) of the Constitution (which prohibits the exercise of the

municipal rating power 'in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour'); that the rates unlawfully discriminated against them, because some landowners were temporarily exempted from their full effect; and that proper notice had not been given to them. The SCA found that these objections were without substance and could not be upheld.

-- ends --