

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Mathenjwa N O & others v Magudu Game Company (258/08) [2009]
ZASCA 57 (May 2009)

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

The Supreme Court of Appeal today dismissed an appeal against a finding of the Pietermaritzburg High Court that animals on a game reserve, enclosed by electrified game fencing, belonged to the respondent game company.

In 1995 the owners of a number of farms in the Magudu area, Vryheid, in KwaZulu Natal had formed a reserve on their farms and constituted the respondent company to manage the reserve and the game. In 2001 they had been joined by a neighbouring landowner, Mr Boucher, who had entered into various contracts in terms of which he gave control of the game on his farms to the game company. The fences between the farms were all taken down and the game roamed freely on the land forming the reserve. The game company, the high court held, had acquired ownership of the game through a number of ways: barter, sale, the birth of progeny and capture.

Some of the Boucher land subsequently formed the subject of a claim for the restitution of land, and was purchased from Boucher by the Regional Land Claims Commissioner and transferred to a community trust. The appellants were all trustees of the trust. They attempted to prevent employees of the game company from gaining access to their land and from hunting or in any way dealing with the game on the trust land. The game company accordingly sought an order that it was the owner of all game on the trust property, and that it was entitled to enter the property to recover its game. (The trust had

conceded that some species which did not occur naturally in the area could be removed.) The high court found that the game company remained owner of the game despite the fact that the trust land was excluded from the reserve.

The principal issue before the high court was whether the game company had acquired the game originally on the Bouwer farms that were transferred to the trust. It was argued by the trust that Bouwer had not transferred ownership of the game on his property to the game company, but merely handed the control and management of the animals to it. It also argued that since the game company did not have actual control of the game because the reserve was very large, the animals had reverted to a state where they were free – unowned by anyone. The common law principle is that wild animals belong to no one unless captured and kept under the owner's control.

The SCA confirmed the high court's finding that the game company had acquired ownership and kept control of the game within the reserve. Although the game roamed freely it could not escape the reserve and was in effect controlled by the game company. The trust was not therefore entitled to prevent access by the game company to its land to capture the game, and was obliged to allow the game company to recover it. Accordingly, the appeal was dismissed.
