



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 17 February 2010

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

THE CAMPS BAY RATEPAYERS' AND RESIDENTS' ASSOCIATION and ANOTHER versus GERDA YVONNE ADA HARRISON and ANOTHER

The Supreme Court of Appeal today dismissed an appeal against the decision of the Cape High Court refusing an application for the review and setting aside of the Cape Municipality's approval of building plans for a proposed development of residential property situate in Camps Bay.

The SCA found that the plans generally complied with the provisions of section 7 of the National Building Regulations and Building Standards Act 103 of 1977 and the relevant Zoning Scheme Regulations except in respect of setback requirements prescribed in section 47 of the Zoning Scheme which prohibits the erection of a building nearer than 4,5 metres to the street boundary. The SCA however held that the appellants' failure to timeously object to the encroachment, which it found trivial as the appellants themselves and their experts had overlooked it for years and would not significantly impact on the aesthetics and future development of Camps Bay, precluded them from relying on it in their review application. In reaching this conclusion, the SCA took into account, amongst other factors, the length of the appellants' delay, a three-year period, in raising the objection and the prejudice that the respondent, Mrs Harrison, who, in apparent oblivion to the encroachment, had built a substantial dwelling in reliance upon the approval of the plan and sustained considerable legal costs defending proceedings unrelated to the encroachment, would suffer.