



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 April 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.

MEC v Kruizenga

[1] The SCA today held that an attorney, who agrees at a pre-trial conference in terms of rule 37 of the Uniform Rules to settle an opposing party's claim without his client's authority, nevertheless has ostensible (apparent) authority to bind the client to the agreement. It therefore dismissed an appeal by the MEC for Economic Affairs, Environment and Tourism in the Eastern Cape against a judgment of the high court in Bhisho, which had made the same finding. It also ordered the MEC to pay the costs of the appeal, including the costs of two counsel.

[2] The dispute formed part of the litigation in a trial action in which the two respondents claim damages from the appellant in his representative capacity arising from an alleged negligent failure of the provincial government's employees to take preventative measures to contain a fire. The fire started on provincial government property under the appellant's control and spread to the respondents' adjoining properties causing extensive damage to their vegetation and infrastructure.

[3] In essence the dispute concerned whether the State Attorney, who had reached certain agreements on behalf of the MEC with the respondents over a period of 18 months at two pre-trial conferences convened in terms of rule 37, the effect of which was to settle most of the respondents' claims, had bound the MEC by these agreements. The MEC's legal representatives argued that the MEC was not bound because the State Attorney was not authorised to make the agreements. The argument was made on the basis of the existence of a general instruction that the State Attorney may not settle any claim without the express authority of the MEC or the head of department.

[4] The SCA held that once the MEC had instructed the State Attorney to defend the claim, this necessarily included his attending various pre-trial processes, including pre-trial conferences. The MEC thereby represented to the respondents that the State Attorney had the authority to settle the claims. And because the respondents were unaware of any limitation of authority on the State Attorney, it held that the MEC could not escape the consequences of these agreements.

[5] The SCA held that to allow the MEC not to be bound by the agreements, made over a period of 18 months, would defeat the purpose of rule 37, which encourages settlements, and severely hamper the conduct of civil trials. It would mean that attorneys can no longer assume that their colleagues are authorised to make important decisions in the course of litigation without their client's authorisation.

[6] It thus held that the MEC was estopped (prohibited) from denying the State Attorney's authority to conclude the agreements in question.