THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Maccsand v City of Cape Town
(709/10; 746/10) [2011] ZASCA 141 (23 September 2011)
Media Statement

Today the Supreme Court of Appeal (SCA) delivered a judgment in which it upheld in part an appeal against orders of the Western Cape High Court, Cape Town. While it upheld an interdict against the first appellant (Maccsand) preventing it from commencing or continuing with mining operations until and unless authorisation had been granted in terms of the Land Use Planning Ordinance 15 of 1985 (LUPO) for the land in question to be used for mining, it set aside orders to the effect that environmental authorisations had be obtained in terms of National Environmental Management Act 107 of 1998 (NEMA) for the carrying out of activities listed in items 12 and 20 of Government Notice R386 of 21 April 2006 on the land in question.

The facts and history of this matter can be summarised as follows:
Maccsand was authorised to mine sand on two pieces of land situated in Mitchell's Plain by a mining right and a mining permit issued to it by the Minister of Mineral Resources in terms of the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA). The properties were zoned as rural and as public open space
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The City of Cape Town, owner of the properties, insisted that Maccsand could not continue mining on the properties without applying for the properties to be rezoned to allow for mining in terms of LUPO, and without obtaining environmental authorisations for certain listed activities in term s of NEMA. The City sought and was granted interdicts and declaratory orders by the court below which prohibited it from mining until these conditions had been met.

The court below held in respect of LUPO that the argument that the MPRDA excluded the application of LUPO was flawed because it undermined the division of powers envisaged by the Constitution and would have the effect of eradicating a municipality's planning function whenever a national competence impacted on land use. In respect of the NEMA issue, the court below held that even though a great deal of NEMA has been incorporated into the MPRDA, this did not have the effect of ousting the obligation placed on Maccsand by s 24 of NEMA to obtain environmental authorisations where its mining activities involved listed activities

The SCA held that the MPRDA does not concern itself with land use planning and the Minister, when she considers the grant of a mining permit, does not, and probably may not, take into account such matters as a municipality's integrated development plan or its scheme regulations. As a result, the MPRDA does not provide a surrogate municipal planning function in place of LUPO and does not purport to do so. Its concern is mining, not municipal planning.

LUPO thus operates alongside the MPRDA with the result that once a person has been granted a mining right in terms of s 23 of the MPRDA he or she will not be able to commence mining operations in terms of that right unless LUPO allows for that use of the land in question.

On the NEMA issue, the SCA held that as the Environmental Impact Assessment Regulations promulgated in terms of NEMA and which formed the basis of the relief sought by the respondents in terms of NEMA, had been repealed after argument but before judgment in the court below, the interdicts granted in terms of these regulations could serve no purpose and the declaratory orders were academic. As a result the prayers in the court below's order dealing with the NEMA issue were set aside.

The appeal was thus upheld in part.

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