



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: 21 May 2012

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.

Midstream Home Owners Association v Shoprite Checkers; Heritage Hill Home Owners Association v Shoprite Checkers

[1] The Supreme Court of Appeal today dismissed an appeal against a judgment of the Pretoria High Court dismissing an application for a final, alternatively, an interim interdict against Shoprite Checkers prohibiting the latter from constructing, completing or utilising an access point (or entrance) on Brakfontein Road, Centurion, giving entry to Shoprite Checkers' distribution centre, allegedly in breach of a line of no access imposed in terms of approved amendment scheme 945, an amendment to the then Centurion Town Planning Scheme, 1992, now the Tshwane Town Planning Scheme, 2008. The interim relief was sought pending an application to review and set aside any approval that may have been granted to Shoprite Checkers to construct the access point; an application for a final interdict prohibiting any development or construction in

breach of the environmental authorisation; an appeal to the Townships Board; and an application for a mandamus against the second respondent (the Municipality) compelling it to procure suitable orders against Shoprite Checkers.

[2] The first five appellants, four of which are home owners associations and the other a school, all form part of Midrand Estates which was developed by the sixth appellant, Bondev Midrand. The seventh appellant is a resident of Midstream Estates and owns a stand there. Midrand Estates is a township development known colloquially as Midstream Estates. Midstream Estates will when completed comprise a land area of approximately 1000 hectares with 5 000 residential dwellings. Shoprite Checkers' distribution centre is situated on Louwlandia Extension 25 Township, Centurion within the industrial corridor on both sides of the Ben Schoeman (N1) highway linking Johannesburg and Pretoria. Brakfontein Road runs east to west towards the N1 and the distribution centre is located south of it with Olievenhoutbosch Drive on its western border. The Heritage Hill residential development lies north of Brakfontein Road, opposite the distribution centre. To the east of it is Midstream Estates entry to which is also from Brakfontein Road. A number of corporations have established distribution centres or head offices in this industrial area from as early as 1999 or 2000.

[3] In the June 2010 Shoprite Checkers financial report Mr JW Basson, chairman of the group, described the distribution centre as the largest of the group –

‘where distribution facilities have virtually doubled from 80 000 m² to 145 000 m². The main building of 114 000 m² will be the largest distribution centre under one roof on the continent.

On completion at the end of the 2010 calendar year the facility will serve as the distribution point for about 90% of ambient products delivered to approximately 380 stores in the Gauteng area and beyond.

More than 1,100 suppliers will be delivering their products to the centre where they are stored, collated, and then distributed to retail stores on a high-frequency basis.

The new Centurion distribution centre was developed in a responsible manner using environment-friendly approaches to construction. This was followed through with further investment in environment-friendly design that includes treatment of waste water and an ability to recycle waste. Central reclamation forms part of the Group's safety and recycling programme, for the removal of damaged stock at the earliest opportunity, to avoid possible contamination of other products and control waste.'

[4] The Supreme Court of Appeal dismissed the appeal because it found that the Municipality did in fact approve of the new access point. The submission of the site development plan for approval, depicting the proposed access, could not be construed as anything other than an application for permission from the Municipality to have that access. The appellants were therefore not entitled to a final interdict, nor to an interim one. As far as the latter is concerned, the SCA found that the Municipality had not prescribed a notice procedure for applications for the revocation of a line of no access to be made: no advertisement was required. The appellants had for this and other reasons not demonstrated that they would succeed on review. The appeal was thus dismissed.