



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
DATE 15 March 2013
STATUS Immediate

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

Lagoonbay Lifestyle Estate (Pty) Ltd

v

The Minister for Local Government, Environmental Affairs and Development Planning of the Western Cape & others
(320/12) [2013] ZASCA 13 (15 March 2013)

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by Lagoonbay Lifestyle Estate (Pty) Ltd (Lagoonbay), the proposed developer of a rather ambitious development project in George. The development envisages a gated community spanning some 655 hectares, which will consist, *inter alia*, of two golf courses, single residential houses, fractional title lodges, a wellness centre, spa and clubhouse precinct, a commercial centre, conference centre and private nature reserve. R5 billion is the projected cost of the development. Given its vast scale, Lagoonbay required approval for the project in four different phases – two of which, namely, an amendment to the George and Environs Structure Plan and a rezoning and subdivision application were relevant for the purposes of the appeal. When Lagoonbay's application for the amendment of the structure plan came before the then Minister for Local Government, Environmental Affairs and Development Planning of the Western Cape (the Minister), she provisionally approved the application. In doing so she made it a condition of her approval that Lagoonbay's future zoning application shall be subject to approval by provincial government. Thereafter Lagoonbay's rezoning and subdivision application was approved by the George Municipality. But, acting in accordance with the condition imposed by the Minister, the Municipality then forwarded the application to the present Minister, who refused to approve it. Aggrieved by that refusal, Lagoonbay applied to the Western Cape High Court for various declaratory orders. It cited the Minister as the first respondent, the George Municipality as the second and the Cape Windlass Environmental Action Group, an environmental organisation committed to the

protection of the environmental integrity of the Garden Route (or Cape Windlass as it is known), as the third. The George Municipality took no part in the proceedings. The high court dismissed Lagoonbay's application with costs, but granted leave to it to appeal to the SCA.

In upholding the appeal, the SCA held that the rezoning application was a matter for the George Municipality, not provincial government. Thus, according to the SCA, the Minister had usurped for herself and her departmental officials a power that had been reserved for the Municipality when she made her approval of Lagoonbay's application for the amendment of the structure plan conditional upon the provincial government's approval of the zoning application. As such, the decision by the Minister to refuse the amendment of the rezoning and subdivision application could not stand and it accordingly fell to be set aside. The SCA confirmed that the George Municipality was the competent authority to consider and determine Lagoonbay's application for rezoning and subdivision in respect of the proposed development and its decision to approve that application was accordingly confirmed. The SCA further held that as Lagoonbay's application for the amendment of structure plan had not been approved by the Minister it had to be remitted to him for reconsideration. It accordingly upheld the appeal and ordered the Minister and the Cape Windlass Environmental Action Group to pay Lagoonbay's costs.

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