



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 01 October 2014
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.

MSUNDUZI MUNICIPALITY V DARK FIBRE AFRICA (RF) (PTY) LIMITED (20119/14) [2013] ZASCA 165 (01 October 2014)

Today the Supreme Court of Appeal handed down judgment confirming an order of the Kwazulu Natal High Court, Pietermaritzburg in which an application brought by the Msunduzi Municipality to interdict Dark Fibre Africa (DFA) from proceeding with installation of an underground electronic communications cable network in some parts of Pietermaritzburg.

The Municipality had contended that DFA was obliged to obtain its permission to commence with construction and that it (DFA) was obliged to consent to the municipality's terms and conditions of construction. Its case was that distinction had to be drawn between private and state organ landowners in that to exercise their rights under s 22 of the Electronic Communications Act (ECA) licensees under that Act had to obtain permission from landowners in respect where exercise of the rights related to land held by state organs; whereas such permission is not required in respect of land held by private entities.

In dismissing the appeal the SCA held that licensees under the Electronic Communication Act (ECA) do not require permission from a local authority to exercise their rights under s 22 of the ECA. This is so when licensees seek to exercise their rights under both privately owned land and land owned by State organs. Licensees are, however obliged to comply with applicable law when implementing decisions taken in terms of s 22. But in this case the municipality had not made out any case that DFA had failed to comply with laws, practices and procedure applicable in the construction underway. The case brought by the municipality had been directed at DFA's decision to commence construction.

The municipality had also contended that the decision by DFA to commence construction should be reviewed and set aside as it did not comply with the requirement of legality and was procedurally unfair, unreasonable and unlawful. The court held that there was no evidence to support the contention by the municipality's challenge based on legality, procedural unfairness, unreasonableness and unlawfulness. It was, in fact the municipality that had repeatedly refused to cooperate with DFA for approval of the plan of construction, including agreement on conditions on which construction would proceed.

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