



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 3 June 2016

STATUS Immediate

Minister of Human Settlements, Western Cape v Penhill Residents Small Farmers Co-operative (429/2015) [2016] ZASCA 99

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.

The Supreme Court of Appeal today upheld an appeal against the decision of the Western Cape Division of the High Court, sitting as a full court on appeal to it, which refused an interdict to prevent further unlawful occupation of property owned by the Western Cape Provincial Government. The property, known as the Penhill Farms, was until 1994 unoccupied and not farmed. It is a huge tract of land, just over 200 hectares, near Stellenbosch, close to the N2 highway running between Cape Town and Somerset West.

In 1994 a small-scale farmer took occupation of a portion of the property and started farming pigs on it. Other farmers followed suit. The farmers formed a co-operative in 2000, the Penhill Residents Small Farmers Co-Operative Ltd (the Penhill Farmers). The Provincial Government actively assisted them with farming activities, and representatives of the Penhill Farmers, the Provincial Government and the City of Cape Town met many times to discuss regularizing the occupation by the Penhill Farmers. Draft leases were

discussed, but none was ever concluded. As early as 2007, the Provincial Government advised the Penhill Farmers that the unoccupied portions of the property were required for other farmers (the Ithemba farmers) and for urban development.

By June 2011 some 90 hectares were being actively farmed. When this appeal was set down for hearing, early in 2015, only 35 hectares were unoccupied and available for other use. In early 2011, the Provincial Government advised the Penhill Farmers to stop taking further occupation of the property and sent notices requiring them to demolish new structures. However, further occupation continued apace.

It accordingly brought an urgent application to restrain the Penhill Farmers from taking occupation of additional land and erecting further structures. They resisted the relief, claiming that they had consent to use the entire property, or a legitimate expectation, as a result of promises made, to be consulted before their rights were affected.

Six months after the application was heard the high court refused to grant an interdict on the basis that the Penhill Farmers had both consent and a legitimate expectation to be heard. It failed to take into account the principle that parties cannot rely on alternative facts. They could not rely on consent or a promise as to future conduct. Despite this, the full court on appeal refused the appeal, also finding that there was actual consent to occupy the entire property and a legitimate expectation that they would be heard before the Provincial Government used the unoccupied property for other purposes. The full court's judgment was handed down some 18 months after the appeal was heard. Part of the delay was caused by the parties negotiating settlement.

On a further appeal, with the SCA's special leave, the decision of the full court was reversed. The SCA found that an examination of the discussions at meetings and of correspondence between the Provincial Government and the Penhill Farmers showed that the Provincial Government had never agreed that the Penhill Farmers could occupy and farm the entire property. On the

contrary, whatever had been discussed was in relation to each portion of the property actually farmed; and the Penhill Farmers had been advised several years before the interdict was sought that the unoccupied property was needed for other purposes.

The SCA thus set aside the decision of the full court and replaced its order with one restraining the Penhill Farmers from settling on or erecting structures on demarcated portions of Penhill Farms.