

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: 23 November 2016

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.

**Macassar Land Claims Committee v Maccsand CC**

The Macassar Land Claims Committee is a voluntary association representing members of the community of Sandvlei, Macassar. It claims that this community is descended from a group of freed slaves on the farm Zandvliet and that, after they were freed, they enjoyed rights of commonage over Zandvliet that were reflected in the title deed of the farm. However, after the declaration of Macassar as a Coloured Group Area in terms of the Group Areas Act 41 of 1950, the various erven that incorporated parts of the commonage were transferred either to members of the Coloured group or to the Community Development Board, a statutory body. When this was done the references in the title deeds to the land being or including commonage were deleted. As a result the Committee claims that the community of Sandvlei was dispossessed of their rights in the commonage in terms of a piece of racially discriminatory legislation.

On 23 June 2003 the Committee launched an application before the Land Claims Court (LCC), in terms of the provisions of the Restitution of Land Rights Act 22 of 1994 (the Act), seeking restitution of a right in land in respect of the commonage previously forming part of erven 1195,

1196, 1197, 1198 and 1191 Macassar. As part of the relief claimed it asked that the LCC order that Maccsand's mining right under the Minerals and Petroleum Resources Development Act 28 of 2002 (the MPRDA) be expropriated and expunged. Maccsand and the government, represented by the Department of Mineral and Energy, claimed that the LCC's powers of expropriation did not extend to expropriation of Maccsand's mining right.

The LCC upheld the arguments on behalf of the Department and Maccsand. On appeal the Committee argued that the powers of the LCC under s 35(1)(a) of the Restitution of Land Rights Act 22 of 1994 (the Act) to order expropriation of land or a right in land entitled it to order the expropriation of Maccsand's mining right. The SCA rejected this argument for three reasons. First, it held that the LCC's power of expropriation could only be exercised in order to restore to a claimant land or a right in land. As the Committee was seeking the return of a right of commonage and not the restoration of the mining right the power of expropriation did not extend thereto.

Second the SCA held that the Committee was not entitled to claim more in terms of the Act than the right of which it had been dispossessed. It rejected the contention that the power of the LCC to adjust a right in terms of s 35(4) of the Act entitled it to claim the restoration of property, as opposed to the right of commonage of which it claimed to have been deprived.

Thirdly, the SCA held that even if the Committee's claim was construed as one for the restoration of land that did not entitle it to restoration free from any burdens imposed upon the land under legislation passed by a democratic government after 1994. It was accordingly bound by the grant of rights to Maccsand under the MPRDA

and not entitled to seek their expropriation and expungement. Subject to an amendment of the terms of the LCC's order the appeal was dismissed.