



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: 22 February 2017
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.

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

and

IVOR LEROY PHILLIPS

The respondent, Mr Phillips, sold certain farming properties to the South African Development Trust in 1977. He subsequently instituted action against the Minister of Rural Development and Land Reform as well as the Regional Land Claims Commissioner, Eastern Cape in which he claimed compensation under the Restitution of Land Rights Act 22 of 1994, contending that the sale of the farms in 1977 constituted a dispossession envisaged by that Act for which he had not received adequate compensation. The Land Claims Commissioner initially attempted to settle the matter by paying a substantial sum of money but later adopted the attitude, also taken by the Minister, that Mr Phillips, as a white person, was not entitled to receive restitution under the Act.

The arguments advanced by the respondents in this regard flew in the face of a long line of judgments to the contrary. On 9 May 2013 the Land Claims Court

granted an order claiming that Mr Phillips had indeed been dispossessed of rights of land and that his sale of the properties, which had taken place under coercion and duress, amounted to a dispossession. The Minister and the Land Claims Commissioner both applied to the Supreme Court of Appeal for leave to appeal against this decision. Their application was dismissed as was a subsequent application for leave to appeal addressed to the Constitutional Court.

Consequently, in June 2014 the matter went back to the Land Claims Court for it to determine what compensation should be awarded to Mr Phillips as equitable redress under The Restitution Act. After evidence was led, the Land Claims Court decided that Mr Phillips ought to be paid a sum of R14 785 000. The Minister and the Commissioner appealed to the Supreme Court of Appeal against that award. However, they allowed their appeal to lapse and, when the matter came before the Supreme Court of Appeal, it was necessary for them to apply for condonation and reinstatement of their appeal. In considering these questions, the court had regard to the prospects of the appeal succeeding.

The principal point on which the appeal was based, was the contention that the Land Claims Court had erred in valuing the farms by having regard to the so-called 'Smaldeel norms' which had been used by the respondent's expert witnesses in their valuation of the property, and that the evidence of the experts the Minister and Commissioner had called on value ought to have been accepted. However, in argument, counsel for the Minister and the Commissioner conceded that their witnesses had been correctly discredited and that the Smaldeel norms were appropriate.

The appellants also contended that as the compensation Mr Phillips had been paid had been used by him to farm successfully, he should not be awarded any further redress. This the SCA held flew in the face of the judgment of the Constitutional Court in *Florence the Government of the Republic of South Africa* 2014 (6) SA 456 (CC) para 132 where it was held that it is correct to set the loss at the time of dispossession having regard to the market value of the property less the amount of

compensation received at the time of dispossession.

The SCA also rejected an argument that no redress ought to be awarded as Mr Phillips had not been obliged to sell and could have remained in possession until his farms had been expropriated when he could have challenged the compensation.

Turning to the question of costs, the Land Claims Court had ordered the applicants to pay costs on the scale between attorney and client. The Supreme Court of Appeal held that there is no reasonable prospect of it being shown that this discretion had been improperly exercised.

As there was no prospect of the proposed appeal succeeding, the application for condonation of the late filing of the record for the proceedings and the reinstatement of the appeal was dismissed, and the appeal was struck from the roll.