



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 29 November 2017
STATUS Immediate

***Minister of Rural Development and Land Reform v Normandien Farms;
Mathimbane & Others v Normandien Farms Cases 512/2016 & 370/2017
[2017] ZASCA 163 (29 November 2017)***

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 (SCA) today gave judgment in two related appeals against orders granted by the Land Claims Court (LCC) in favour of Normandien Farms ('Normandien'). The first appeal was by the Minister of Rural Development and Land Reform and the second appeal was by a group of labour tenants occupying a part of Normandien's farm.

The SCA upheld the Minister's appeal against an order requiring him to make alternative grazing land available to the labour tenants. The LCC had found that the Minister was under an obligation to do so by virtue of the Land Reform Provision of Land and Assistance Act 126 of 1993. The SCA was doubtful whether the said Act empowered the Minister to provide grazing land unaccompanied by human settlement. However, even if such a power existed, a case had not been made out to compel the Minister to exercise it in the circumstances of the present case.

In regard to costs as between the Minister and Normandien, the SCA found that because of the constitutional nature of the litigation between those parties the *Biowatch* principle applied. Accordingly, the parties were ordered to bear their own costs in the LCC and the SCA.

In regard to the appeal by the labour tenants, the SCA, in the interests of justice, condoned the labour tenants' failure to file their heads of argument timeously, despite the non-compliance being egregious and the explanation inadequate. However the SCA dismissed a preliminary application by the labour tenants that Normandien be held in contempt and that the appeal be postponed sine die. The contempt/postponement application was found to be without merit and to constitute an abuse of process.

As to the appeal itself, which was against an order requiring the labour tenants to remove their livestock from Normandien's farm for a period of five years to enable the grazing veld to recover, the SCA held that Normandien had standing to seek this relief in terms of the Conservation of Agricultural Resources Act 43 of 1983 ('CARA'). The experts for all the parties, including for the labour tenants, had agreed that such removal was necessary and that the continued presence of the livestock on the farm contravened CARA. The SCA rejected an argument that the order amounted to an 'eviction' as contemplated in the Land Reform (Labour Tenants) Act 3 of 1996. Normandien had not repudiated the labour tenancy relationship between itself and the labour tenants but was simply enforcing the provisions of CARA.

The SCA also found that the LCC had correctly dismissed a counter-application by the labour tenants for a declaration that the relief sought by Normandien was subversive of rights acquired by the labour tenants in terms of an order given in other litigation between the same parties. The purported order on which the labour tenants relied, being a purported amendment of an earlier order, was a nullity because the judge had been *functus officio*. In any event such order did not exempt the labour tenants from compliance with CARA.

In regard to costs as between Normandien and the labour tenants, the SCA found that the *Biowatch* principle did not apply because both sides were private parties. The LCC had ordered the labour tenants to pay Normandien's costs on punitive scale because it regarded the counter-application as

frivolous and vexatious. The SCA held that there were no grounds for interfering with this order since the LCC had not been guilty of a material misdirection. Normandien did not ask for a punitive costs order in the SCA, and the labour tenants were thus ordered to pay Normandien's costs on the ordinary scale. However, the labour tenants' Durban attorneys were ordered personally to pay Normandien's costs in the condonation and contempt/postponement applications on the attorney and client scale; and it was further ordered that the said attorneys and counsel were not entitled to recover fees from the labour tenants in respect of the condonation and contempt/postponement applications.

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