



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 23 SEPTEMBER 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Chithi and Others; In re: Luhlwini Mchunu Community v Hancock and Others (Case No. 423/2020) [2021] ZASCA 123 (23 September 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appellants' appeal against the decision of the Land Claims Court, Randburg (LCC).

The issue before the SCA was whether the punitive cost order granted by LCC depriving the land claimants' Legal Representatives of their fees in a land claim trial, should be set aside.

In November 2019, two Advocates and an Attorney were appointed to represent claimants as plaintiffs in a trial for restitution of land rights, held in the LCC. Prior to the commencement of the trial, on 17 September 2019 a pre-trial conference, presided over by the learned Acting Judge President, was held. During the pre-trial conference, the learned Acting Judge President requested the parties to reflect on their stance, with reference to the standard of proof set by the Constitutional Court. The issue being whether what the plaintiffs sought to pursue in the land claim was indeed a community claim as prescribed by the Restitution of Land Rights Act. She cautioned the parties that should the allegation that the plaintiffs were a community not pass muster, there would be costs implications.

At the end of the plaintiffs' case, the LCC ruled that the plaintiffs were not successful in proving that they were a community. Their action was thus dismissed with costs. The order included a punitive costs order granted against their Legal Representatives. The LCC had found that the plaintiffs' Legal Representatives persistently pursued proceedings that were vexatious, frivolous and an abuse of the court.

The SCA held that the principle that courts should not grant adverse court orders, without providing the affected parties an opportunity to be heard, is trite and sacrosanct. Furthermore, the SCA held that the right to be heard prior to an order being made in vexatious proceedings is entrenched in the Vexatious Proceedings Act 3 of 1956. The SCA concluded that the learned Acting Judge President erred in not paying due regard to these statutory prescripts, in that the learned Acting Judge President failed to separate the inquiry concerning costs against the Legal Representatives from the trial, and to provide an opportunity for the Legal Representatives to be heard.

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