



## 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:** 17 June 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***

*The Black Eagle Project Roodekrans v The MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government and Others (542/2019) [2021] ZASCA 84 (17 June 2021)*

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The Supreme Court of Appeal (SCA) today dismissed an appeal brought by The Black Eagle Project Roodekrans against the decision of the Gauteng Division of the High Court, Johannesburg (the high court) with costs, including those of two counsel where so employed.

The case concerned the review of an appeal decision by the MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government (MEC), the first respondent, to dismiss The Black Eagle Project Roodekrans (Black Eagle), the appellant's, appeal against a decision of the Head of Department of Agriculture, Conservation and Environment, Gauteng Provincial Government (HOD), the second respondent.

On 14 September 2004, Landev (Pty) Ltd (Landev), the third respondent, acting in terms of s 22(1) of the Environmental Conservation Act 73 of 1989 (ECA) applied to the HOD for authorization to establish a residential development on a property in the Mogale Municipal District (the property). On 12 January 2006, the HOD granted permission for Landev to develop part of the proposed development, with the remainder thereof being refused. Following upon an amendment to the ECA, Landev applied on 10 May 2006 to the HOD for an exemption in accordance with the new s 28A of the ECA from certain provisions of the ECA. Black Eagle opposed the exemption application on grounds that the development would have a substantially detrimental effect on the environment. On 28 August 2006, and following a duly constituted hearing, the HOD granted Landev's exemption application, the effect of which was to authorise the partial development of the remainder of the development. On 26 September 2006, Black Eagle noted an appeal to the MEC against the HOD's exemption decision. On 8 November 2006, the MEC dismissed the appeal. In February 2007, Black Eagle obtained an interdict to prevent Landev from continuing with the development, pending a final decision on the review that was brought in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In 2014, Landev brought an application to increase the density of its

development from 358 to 1064 residential units (the amendment application). The HOD dismissed the amendment application. On 27 March 2015, the MEC upheld Landev's appeal against the HOD's decision. Black Eagle then supplemented its review application to include a review of the MEC's decision on the amendment application. This review was upheld in terms of the high court's order. Landev did not cross-appeal this part of the high court's order. The HOD and the MEC elected not to oppose the review application and decided that they would abide the decision of the high court.

After having regard to the foregoing history of the matter, the SCA dealt with a preliminary issue that was dispositive of the appeal. The SCA held that a successful review of the MEC's decision would not have affected the validity of the HOD's decision, which would have remained intact. What was required of Black Eagle and what it had failed to do was to advance a proper challenge to the HOD's decision. The SCA held further that Black Eagle failed to bring its review of the HOD's decision timeously in compliance with PAJA.

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