THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case number: 547/08

In the matter between:

PARADYSKLOOF GOLF ESTATE (PTY) LTD **APPELLANT**

and

MUNICIPALITY OF STELLENBOSCH **RESPONDENT**

Neutral citation: *Paradyskloof Golf Estate v Municipality of Stellenbosch* (547/08) [2010] ZASCA 92 (2 July 2010)

CORAM: **MPATI P, MTHIYANE, MALAN AND SHONGWE JJA AND GRIESEL AJA**

HEARD: **7 MAY 2010**

DELIVERED: **2 JULY 2010**

SUMMARY: Sale – of land – suspensive condition in written agreement providing that either party entitled to resile from it if suspensive condition not fulfilled – whether exercise of right to resile almost 14 months after lapsing of period for fulfilment of condition unreasonable – whether delay of almost 14 months before exercising right to resile from agreement justifies inference that party resiling had already decided not to resile.

ORDER

On appeal from: Western Cape High Court (Cape Town) (Davis J sitting as court of first instance)

The appeal is dismissed with costs which shall include the costs of two counsel.

JUDGMENT

MPATI P (Mthiyane, Malan and Shongwe JJA and Griesel AJA concurring):

[1] This appeal concerns the validity of a decision of the council of the respondent, the Municipality of Stellenbosch, to resile from an agreement of sale of certain fixed property. The facts are largely common cause.

[2] On 13 February 1997 the parties concluded a written agreement in terms of which the respondent sold to the appellant a piece of land, approximately 277 hectares in extent, situated at Paradyskloof on the outskirts of Stellenbosch in the Western Cape ('the property'). A purchase price of R16m was agreed upon, of which a deposit of R1.6m had to be paid within 14 days from the date of signature of the written agreement and the balance 'on the date of transfer'. Interest on the balance of the purchase price at the rate of 10% per annum calculated from the date of conclusion of the agreement was also payable by the appellant 'against registration of transfer'. (I shall, for convenience, henceforth refer to the appellant as 'Paradyskloof' and to the respondent as 'the Municipality'.)

[3] The development envisaged by Paradyskloof on the property was to include, among other things, the construction of an international luxury hotel,

250 dwelling units and an international tournament golf course with ancillary facilities. In terms of the written agreement the Municipality was required to call for certain impact studies to be done in respect of the property, after receipt of which the parties were to meet so as to 'negotiate in good faith, with regard to the extent of the proposed development'. The municipality, in addition, undertook 'to institute an application for the rezoning of the property' so as to provide for Paradyskloof's envisaged development.

[4] The sale of the property was, however, subject to certain suspensive conditions, of which only one concerns us in this appeal. It is recorded in clause 10 of the written agreement and reads:

'10.1 . . .

10.2 This agreement is subject to the suspensive condition that the property is finally rezoned, having the rezoning and/or development rights stipulated . . . above [ie permission having been obtained to construct the hotel, 250 dwelling houses and golf course on the property] or, if different development rights have been agreed upon, such development rights, or such less zoning and/or development rights which [Paradyskloof] may agree to accept.

10.3 If the suspensive condition referred to in clause 10.2 has not been fulfilled within 18 (EIGHTEEN) months from date of lodging of the rezoning application, then either party will be entitled to resile from the Agreement, in which event the deposit paid . . . shall be repaid by the COUNCIL to the PURCHASER, free of interest.'

The rezoning of the property and the development rights were initially obtained timeously, but the decisions of the relevant Members of the Provincial Council to grant them were set aside by the Western Cape High Court on 11 February 2002 at the instance of a third party. The grounds upon which the decisions were set aside are not germane to the determination of the issues now on appeal.

[5] However, the decision of the High Court led to uncertainty as to the status of the written agreement, but after separately obtaining advice on the matter, as well as on the value of the property, which had by then become a contentious issue, the parties entered into negotiations which culminated in a settlement agreement being concluded on 6 April 2004. In terms of the

settlement agreement the parties agreed to be 'bound' by the written agreement (to which I shall now refer as 'the original agreement') and to proceed with its implementation, which would, inter alia, entail fresh applications for rezoning and permission for Paradyskloof's proposed development on the property.[1] The running of the period of 18 months within which the suspensive condition referred to in clause 10.2 of the original agreement had to be fulfilled would thus commence on 6 April 2004 (the date of signature of the settlement agreement). Additional obligations were placed on Paradyskloof in terms of the settlement agreement which I need not record here.

[6] On 29 September 2004 the Stellenbosch Ratepayers Association instituted motion proceedings against the Municipality and Paradyskloof, seeking an order reviewing and setting aside the Municipality's decision to enter into the settlement agreement with Paradyskloof. Those proceedings are still pending.

[7] The period of 18 months from the date of signature of the settlement agreement (6 April 2004) expired on 5 October 2005, without the suspensive condition having been fulfilled. However, on 4 October 2005 the attorneys for Paradyskloof had dispatched a letter to the Municipality informing it that Paradyskloof would not resile from the sale agreement and that it would continue to wait for the approval of the applications for rezoning and development rights. The Municipality was also invited to indicate what its stance was in that regard. Upon receipt of the letter on 4 October 2005 the Municipality's Mayoral Committee (MAYCO) adopted a resolution which it conveyed to Paradyskloof on the following day. The resolution was couched in the following terms:

---

[1] Clause 2.1 of the settlement agreement reads:

'2.1 Voortsetting van die Ooreenkoms

2.1.1 Die partye kom ooreen dat hul gebonde is aan die Ooreenkoms en onverwyld voortgaan met die implementering daarvan – wat *inter alia* 'n *de novo* aansoek vir die verkryging van die nodige ontwikkelingsregte behels met die gepaardgaande struktuurplanwysiging, hersoneringsaansoek, voorafgegaan deur die nodige impakstudies, publieke deelname ensovoorts.

2.1.2 Die ondertekeningsdatum van hierdie skikkingsooreenkoms sal dien as die aanvangsdatum na verwys in klousule 10.3 van die Ooreenkoms.'

'[T]he Mayoral Committee

RESOLVED . . .

(a) in principle, not to exercise its right in terms of clause 10.3 of the Sale Agreement to resile from the said Agreement, but to pursue the option of granting Paradyskloof Golf Estate (Pty) Ltd a further, extended period of 18 months, to afford them reasonable time to meet the suspensive conditions, i.e. to get the necessary development rights, as sought by them; and

(b) to follow a notice and comment procedure in terms of the Promotion of Administrative Justice Act, as to inform the public of its intention to pursue the option of extending the time to allow Paradyskloof Golf Estate reasonable time to meet the suspensive conditions, and to allow for a reasonable opportunity to make representation[s].'

[8] On 23 February 2006 and after it had followed the notice and comment procedure referred to in its resolution of 4 October 2005, MAYCO adopted the following resolution:

'(a) [T]hat Council confirm its decision not to resile from the Agreement.

(b) that Council enter into negotiations with [Paradyskloof] on the following issues, in an effort to reach consensus, which consensus need to be in the form of a formal variation/amendment of the Settlement Agreement . . . :

  (i) period of extension and effective date of such Agreement;

  (ii) possible re-calculation of "*loss of income*" for the period 1 October 2004 until date of registration of the property in the name of [Paradyskloof], on the same basis the calculations were done in the Settlement Agreement (see paragraphs 2.2 of the Settlement Agreement);

(c) that Council authorise the Municipal Manager to act on behalf of Council in negotiations with [Paradyskloof], . . . ; and

(d) . . . '

This resolution was conveyed to Paradyskloof's attorneys by a Mr Smit, the Municipality's Director: Corporate Services, by email on 7 March 2006.

[9] Subsequent discussions and negotiations on the issues mentioned in paragraph (b) of MAYCO's above resolution did not bear fruit and on 1 September 2006 the Municipality's attorneys addressed a letter to the attorneys for Paradyskloof, notifying them, inter alia, that the Municipality was

'obliged to consider the question whether or not to proceed with this transaction with reference to the factors contained in the provisions of s 14(2) of the Local Government: Municipal Finance Management Act' (MFMA).[2] The letter also invited Paradyskloof, if it so wished, to make representations to the Municipality regarding the factors to be considered by the latter as required by the provisions of s 14(2) of the MFMA.[3] Following a further letter from the attorneys for the Municipality dated 13 September 2006 Paradyskloof, through its attorneys, submitted a memorandum in which it confined itself to a potential decision (by the Municipality) not to consent to the sale in terms of s 14(2) of the MFMA.

[10] When the letters of 1 and 13 September 2006 were addressed to Paradyskloof's attorneys by the attorneys for the Municipality, the Municipality was in possession of senior counsel's opinion, by which it was advised, inter alia, (a) that on the expiry of the 18-month period referred to in the settlement agreement, the parties were entitled to make a fresh decision as to whether to proceed with the contract of sale; (b) that s 14(2) of the MFMA came into operation on 1 July 2004 and that therefore the MFMA was in operation on the date the Municipality was entitled to consider whether or not to proceed with the transaction; (c) that the power to make a determination in terms of s 14(2)(a) and (b) of the MFMA could not be delegated: that the full Council could make the necessary decision and that the decision of MAYCO on 23 February 2006 was accordingly invalid; and (d) that Council was obliged, in terms of s 14(2) of the MFMA, to consider the question whether or not to resile from the sale agreement and that in considering that question it must make the determinations referred to in s 14(2)(a) and (b). The Municipality had also

---

[2] Section 14(2) of the Local Government: Municipal Finance Management Act 56 of 2003 provides:
'A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public –
(*a*) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
(*b*) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.'

[3] By this time control of the Municipality had been taken over from the African National Congress by the Democratic Alliance, which appeared not to have been in favour of the transaction.

obtained a valuation report from Messrs Rode and Associates reflecting a value of R150m for the property as at 31 August 2006. It had instructed Rode and Associates to revisit an earlier valuation report so as to reflect 'the current market value' of the property.

[11] At its meeting on 28 November 2006 the Municipality resolved (by majority):

'(a) that the legal opinion of Adv Rosenberg SC be noted;

(b) that the valuation report of Messrs Rode and Associates be noted;

(c) that the representations of Messrs Jan S de Villiers, on behalf of their client, Paradyskloof Golf Estate (Pty) Ltd, be noted;

(d) that, in the light of the material discrepancy between the valuation in (b) above and the price as set out in the settlement agreement, read with the original Sales Agreement entered into between the then transitional local council of Stellenbosch and Paradyskloof Golf Estate (Pty) Ltd dated 13 February 1997, Council, in terms of their obligations under s 14(2) of the MFMA, cannot support recommendations (d) to (g) of the Mayoral Committee, as set out above; and

(e) that, in the light of the circumstances, specifically the opinion of Adv Rosenberg SC, Council resile from the Sales Agreement in terms of Clause 10.3 of the said Agreement.'

[12] The recommendations of MAYCO referred to in paragraph (d) of the resolution are contained in a resolution passed by MAYCO on 22 November 2006. The recommendations read thus:

'(a) . . .

(b) . . .

(c) . . .

(d) that the consideration of the transaction in terms of Section 14(2), at this stage, be delayed until such time as the Municipal Manager concludes his negotiations with Paradyskloof . . . regarding the issues set out in the [MAYCO] resolution of 2009-02-23;

(e) that the Municipal Manager be mandated to conclude such negotiations within a reasonable time period, but before 2007-01-31;

(f) that, after this (and only on the basis that consensus relating to the issues received therein has been reached and the time periods complied with) the

matter be referred to full Council for its consideration in terms of Section 14(2) of the MFMA; and

(g) that, should the Municipal Manager fail to reach an agreement with Paradyskloof as envisaged in (d) (*supra*) Council consider the option, in terms of Clause 10.3 of the Sales Agreement, to resile from the Agreement (in which case it will not be necessary for Council to consider the matter in terms of Section 14 of the MFMA).'

It may be mentioned that the value of R150m placed on the property by Rode and Associates was based on a development consisting of 547 serviced residential erven.

[13] To counter this latest valuation by Rode and Associates, Paradyskloof obtained a further independent valuation from a Mr Tim Moulder of C B Richard Ellis (Pty) Ltd on 28 March 2007.[4] Based on sales of 250 stands, Mr Moulder concluded that a reasonable value for the property as at 1 September 2006 was R65m. Considering that the Municipality placed reliance on a flawed valuation by Rode and Associates in reaching its decision to resile from the sale agreement, Paradyskloof instituted proceedings against the Municipality, seeking an order 'declaring unlawful and invalid, alternatively inefficacious, paragraphs (d) and (e) of the resolution of the [Municipality] taken on 28 November 2006'. In the alternative, Paradyskloof sought an order 'reviewing and setting aside paragraphs (d) and (e) of the said resolution', plus costs, including the costs of two counsel.

[14] Upon being confronted by Mr Moulder's valuation in the founding papers, the Municipality commissioned Rode and Associates for another valuation, this time to be based on a development consisting of 250 stands or erven. That valuation, dated 27 August 2007, determined a market value of R75m 'as in 2006'. Thus, one of the grounds upon which Paradyskloof relied for the order sought was that at the time that it took the decision to resile from the agreement the Municipality ‘was well aware of the reduction from 547 to 250 dwelling units’ and that it therefore ‘relied on a fundamentally flawed

[4] Paradyskloof had obtained a valuation from N S Terblanche and Associates, who had determined a value in respect of the property of R35m.

estimate of the fair market value of the property, more specifically a material mistake by Rode and Associates concerning the number of residential stands in the development'. The High Court (Davis J) dismissed the application with costs. This appeal is with its leave.

[15] In dismissing the application Davis J referred to the majority decision in *Florida Road Shopping Centre (Pty) Ltd v Caine,*[5] a case in which the parties had concluded a written agreement in terms of which the one sold to the other certain fixed property, subject to three suspensive conditions. The written agreement stipulated, after setting out the special conditions, that -

'[s]hould any of the aforesaid special conditions not be fulfilled then we shall have the right to give you notice of cancellation of this agreement which shall thereupon lapse.'

The period within which the special conditions had to be fulfilled was not stipulated in the agreement, but the parties were agreed that by the time the conditions were fulfilled a reasonable period had already lapsed. Although the seller had not given notice of cancellation of the agreement, he refused to be bound by the agreement upon the fulfilment of the conditions, asserting that the contract had been rendered void upon the lapsing of a reasonable period after its conclusion. The majority of the court upheld this argument and found that the words in the provision conferring upon the seller the right to give the purchaser notice of cancellation of the agreement 'were inserted *ex abundanti cautela*'.[6]

[16] Relying on the majority decision in *Florida*, Davis J, in the present matter, held that the settlement agreement lapsed when the suspensive condition was not fulfilled on 5 October 2005. The learned judge said:

'[W]hen the settlement agreement lapsed on 5 October 2005, that is when the suspensive condition clause at 10.3 of the [original agreement] read with clause 10.3 as amended was [not] fulfilled, that was the end of any basis of a contract between the parties. Binding contractual relationships could only be restored by the conclusion

[5] 1968 (4) SA 587 (N).
[6] At 603F-604C.

of a further written agreement which *inter alia* would provide a further date by which the suspensive condition as set out in clause 10.2 had been fulfilled.'[7]

And further:

'Notwithstanding the correspondence and indications that a new written agreement could be negotiated, the existing settlement agreement lapsed on 5 October 2005. No further written amendment was concluded so that the settlement agreement was no longer of legal force and effect.'[8]

Having come to this conclusion, the court considered it unnecessary 'to traverse the whole range of further arguments raised by [Paradyskloof]'. Those arguments, he said, were based 'on the assumption that [the] contract continued.'

[17] An agreement of purchase and sale entered into subject to a suspensive condition does not there and then establish a contract of sale 'but there is nevertheless created "a very real and definite contractual relationship" which, on fulfilment of the condition, develops into the relationship of seller and purchaser. . .'.[9] Upon fulfilment of the condition the contract thus becomes enforceable. Non-fulfilment of the suspensive condition, however, renders the contract void *ab initio*, unless the parties have agreed otherwise.[10]

[18] Strong and very interesting arguments were advanced on behalf of both parties in this court in an effort to persuade us, from the side of Paradyskloof, to find that the agreement did not lapse at the expiry of the 18-month period provided for in clause 10.3 of the original agreement as amended by the settlement agreement and, on the part of the Municipality, to find that the agreement indeed lapsed. I consider it unnecessary to set out counsel's arguments on this issue, since I am prepared to assume, in favour of Paradyskloof, that the agreement did not lapse. The issue to be considered then is whether or not the Municipality's decision to resile from the agreement was lawful and valid.

---

[7] At para 72 of the judgment.
[8] At para 77.
[9] *Corondimas & another v Badat* 1946 AD 548 at 558-9.
[10] R H Christie *The Law of Contract in South Africa* 5ed p145; *Southern Era Resources Ltd v Farndell NO* [2009] ZASCA 150.

[19] Three reasons were advanced on behalf of Paradyskloof as to why the decision was allegedly unlawful. The first was that its foundation was flawed because the factual basis for it was erroneous, in that (a) the second valuation of the property by Rode and Associates at R150m, which was considered by the Municipality, bore no relation whatsoever to the purchase price, and (b) the Municipality's decision, under s 14(2) of the MFMA,[11] not to transfer the property to Paradyskloof came as a result of that valuation. Consequently, so the argument went, the Municipality's decision to resile from the agreement was based on its unlawful and invalid decision not to transfer the property to Paradyskloof.

[20] The short answer to this submission is this. Whatever the reason for the Municipality's decision may have been is really of no consequence. I agree with counsel for the Municipality that in instances such as the present, at worst for the party making the election, its decision to resile may well constitute a breach which would entitle the other contracting party to accept the breach and cancel the agreement, or to reject it and sue for specific performance. Thus, whether or not the provisions of s 14(2) of the MFMA were applicable in this case is, in my view, of no consequence. The decision to resile, whatever the reasons therefor, is not an administrative act which can be reviewed and set aside, but is the exercise of a contractual right.[12] The parties had agreed that upon non-fulfilment of the suspensive condition either party would be entitled to resile from the agreement.

[21] The second reason for the alleged unlawfulness or invalidity of the Municipality's decision to resile from the agreement was that by 23 February 2006 MAYCO had allegedly taken a decision not to resile from the contract when it resolved 'that Council confirm its decision not to resile from the Agreement'. I have mentioned above that this resolution by MAYCO was communicated to Paradyskloof, through its attorneys, on 7 March 2006. It was accordingly contended that the Municipality was bound by that decision,

---

[11] Above n 2.
[12] Compare *Cape Metropolitan Council v Metro Inspection Service (Western Cape) CC & others* 2001 (3) SA 1013 (SCA) at 1023G-1024A.

because once the election was made, it was final. In this regard reliance was placed on the decision of this court in *Administrator, Orange Free State, & others v Mokopanele & another,*[13] where Hoexter JA said that once a contracting party has approbated it cannot thereafter reprobate. Counsel submitted that the decision of MAYCO confirming its earlier decision not to resile[14] from the sale agreement stood on its own and was not subject to the subsequent paragraphs in the resolution.

[22] I do not agree. The decision that MAYCO resolved to confirm on 23 February 2006 was the 'in principle' decision taken on 4 October 2005.[15] That 'in principle' decision was clearly subject to the Municipality pursuing 'the option of granting [Paradyskloof] a further extended period of 18 months, to afford them reasonable time to meet the suspensive conditions', and to follow a notice and comment procedure so as to inform the public of its intention to pursue the option just mentioned. Clearly, MAYCO's decision not to resile from the agreement depended on the parties reaching consensus on the issues listed in paragraph (b)(i) and (ii) of MAYCO's resolution of 23 February 2006. If that were not so, it would mean that were the parties unable to reach consensus on those issues, there would be no time limit for the fulfilment of the suspensive condition. Counsel for Paradyskloof disavowed a tacit term of the agreement to the effect that the suspensive condition would have to be fulfilled within a reasonable time. In my view, it is highly improbable that the Municipality, after having agreed on a specific time period in the original agreement and in the settlement agreement, would be content, when no consensus had been reached, with an open-ended agreement which has no stipulation as to the period within which the suspensive condition had to be fulfilled. The very fact that MAYCO resolved that 'Council enter into negotiations with [Paradyskloof] . . . in an effort to reach consensus' on the period of extension and effective date of the agreement, and which consensus 'need to be in the form of a formal variation/amendment of the Settlement Agreement' clearly points to the decision not to resile being subject to the

[13] 1990 (3) SA 780 (A) at 787G-H.
[14] See paragraph (a) of the resolution of 23 February 2006, quoted in para 8 above.
[15] Quoted in para 7 above.

negotiations. Furthermore, in the letter of 7 March 2006, addressed to Paradyskloof's attorneys advising of the resolution of MAYCO, the following was recorded:

'Hierby aangeheg as Aanhangsel 1 is 'n uittreksel uit voormelde vergadering se notule, waaruit dit duidelik is dat die Uitvoerende Burgermeesters Komitee inderdaad besluit het om nie uit die kontrak te tree nie, onderhewig aan sekere voorwaardes.' (My underlining.)[16]

The letter, in my view, puts the matter beyond doubt.

[23] Counsel conceded during argument that should the finding of this court be against Paradyskloof on this issue, and, I suppose, subject to a third reason why the Municipality's decision of 28 November 2006 was said to be unlawful, then the appeal must fail. The third reason was articulated thus. A party who is entitled to resile from a contract has to exercise its election within a reasonable time after becoming aware of the circumstances giving rise to the right to resile. It was accordingly submitted that on the facts of the present matter the delay between 5 October 2005 (when the 18-month period expired) and 28 November 2006 (when the decision to resile was made) was unreasonable. The motivation for this submission was that during the period between 5 October 2005 and 28 November 2006 the Municipality had received the development rights applications and advertised them for public comments; that the Municipality had embarked upon a public notice and comment process about whether or not it should extend the period for the fulfilment of the suspensive condition, and that it had taken a decision to continue negotiating about, among other things, the period of extension and notified Paradyskloof of it. It was accordingly submitted that taken together with the delay, these facts justify the inference that by 28 November 2006 the Municipality had already decided not to resile from the agreement.

[16] A direct English translation would read: 'Attached hereto as Annexure 1 is an extract from the minutes of the aforementioned meeting, from which it is clear that [MAYCO] indeed decided not to resile from the contract, subject to certain conditions.'

[24] Failure to exercise a right to cancel a contract (in this case to resile from it) within a reasonable time does not necessarily result in the loss of the right. As was said in *Mahabeer v Sharma NO & another*[17]:

'[d]epending on the circumstances, such a failure may, eg, justify an inference that the right was waived or, stated differently, that the party entitled to cancel has elected not to do so. . . .'[18]

The court went further to say:

'In such cases the lapse of an unreasonably long time forms part of the material which is taken into account in order to decide whether the party entitled to cancel should or should not be permitted to assert his right. But *per se* it cannot bring about the loss of the right.'[19]

[25] In its answering affidavit, deposed to by a councillor, namely Mr Johannes Gagiano, the Municipality said the following:

'I deny that, by November 2006, an unreasonably long period had elapsed from 5 October 2005. As is apparent from the chronology of events set out in this affidavit and, to some extent, in the founding affidavit, the intervening time had been taken up with various discussions and requests for representations and comments. There is no reason why the Council resolution of 28 November 2006 was any more prejudicial to Paradyskloof by virtue of being taken in November 2006 rather than in, say, June 2006. The Municipality had used the time to take advice to ensure the legality of its actions; while the applicant had been given an opportunity to motivate its position and explain why a decision should not be taken which would be adverse to its interests. I also refer again in any event to clause 28 of the Sale Agreement.'

No replying affidavit was filed by Paradyskloof. The Municipality's version of events was thus not gainsaid. In these circumstances, it cannot be said, in my view, that the facts justify the inference that by 28 November 2006 the Municipality had already decided not to resile from the contract.

[26] In any event, clause 28 of the original agreement reads:

'No latitude, extension of time or other indulgence which may be given or allowed by any/either party to the any/other party/ies in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of

---

[17] 1985 (3) SA 729 (A).
[18] At 736G-H.
[19] At 736H-I.

any/either party arising from this agreement and no single or partial exercise of any right by any/either party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the parties' rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.'

The parties thus clearly agreed that no delay in the enforcement of any right by any one of them shall be construed as an election to, or not to, enforce the right. It follows that the decision of the Municipality to resile from the agreement cannot be assailed.

[27] In view of these conclusions, it has become unnecessary for me to consider any further arguments on the question whether the MFMA was retrospective in its application and thus whether the provisions of s 14(2) applied to the present matter.

[28] The appeal is dismissed with costs which shall include the costs of two counsel.

.....
L MPATI P

Counsel For Appellant:	O L ROGERS SC A BREITENBACH
Instructed by:	WERKSMAN INC CAPE TOWN
Correspondents:	NAUDES ATTORNEYS BLOEMFONTEIN
Counsel for Respondent:	S P ROSENBERG SC P B J FARLAM
Instructed By:	CLIFFE DEKKER HORMEYER INC CAPE TOWN
Correspondents:	CLAUDE REID INC BLOEMFONTEIN