

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: 03 December 2018

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.

Malebane v Dykema

The SCA today upheld an appeal by a property developer, wishing to develop a petrol service station on the M1 highway north of Bela-Bela, against an order declaring that a rival developer, seeking to undertake a similar development on the same stretch of highway, had a pending application that the local authority was obliged to deal with in terms of s 60(2)(a) of Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). The respondent's application was under consideration by the Limpopo Development Tribunal (Tribunal) on 17 June 2012, on which date the period of suspension of an order of the Constitutional Court declaring Chapters V and VI of the Development Facilitation Act unconstitutional expired.

The Tribunal had granted the respondent's application after the expiry of the period of suspension and at a time when the relevant statutory provisions were unconstitutional. In terms of two earlier decisions by the SCA that approval was invalid. Replacement legislation in the form of SPLUMA only came into operation on 1 July 2015. The issue was whether the respondent's application was still pending at that

time in order to enable him to take advantage of the transitional provisions in s 60(2)(a) of SPLUMA.

The majority in the SCA held that for an application or proceeding to be pending before a tribunal it must be awaiting the decision of that tribunal. If the tribunal no longer has any lawful authority to make a decision on the application, because the statutory provisions under which it was acting have been declared unconstitutional, any outstanding application not completed at that time is no longer pending before it. The respondent could have brought a fresh application before the local authority at any time after 17 June 2012, but was unwilling to do so. Instead he sought to rely on the invalid decision by the Tribunal. Once the Tribunal could no longer make a lawful decision on his application it was no longer pending before the Tribunal. Accordingly, when three years later SPLUMA came into operation, the respondent could not rely on that statute's transitional provisions.

One judge dissented on the basis that the transitional provisions applied and the application remained pending, notwithstanding the absence of any basis upon which the Tribunal could lawfully have disposed of it.