



CONSTITUTIONAL COURT OF SOUTH AFRICA

Britannia Beach Estate (Pty) Ltd and Others v The Saldanha Bay Municipality

Case CCT 11/13

Date of Judgment: 05 September 2013

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 5 September 2013 the Constitutional Court handed down a judgment refusing leave to appeal with costs.

The dispute related to six applications for development of land, which included the rezoning and subdivision of land, made by the applicants to the Saldanha Bay Municipality (Municipality). The Municipality approved the developments subject to conditions imposed in terms of the Land Use Planning Ordinance (LUPO). The conditions required the applicants to pay certain capital contributions in respect of the developments the applicants sought to undertake.

The applicants made an application in the High Court where they contended that the Municipality's approach in levying capital contributions was invalid and legally defective. They also sought to establish a duty on the Municipality to furnish an account to them. The High Court found for the applicants, holding that the tariff for the calculation of capital contributions had been rescinded. As a result, the new tariff was not in force. The High Court also held that there was a duty on the Municipality to account to the applicants.

On appeal, the Supreme Court of Appeal found that the applicants had not submitted that the conditions levied in terms of LUPO were unlawful. It further held that conditions agreed to cannot unilaterally be amended by any of the parties and that they remain binding until set aside in review proceedings. The Supreme Court of Appeal further found that the procedure described in LUPO was not followed by the applicants. As a result, the Court held that it was unnecessary for it to deal with the duty of the Municipality to account to the applicants and held in favour of the Municipality.

In the Constitutional Court, the applicants accepted the Supreme Court of Appeal's approach to the unlawfulness of the conditions. However, the applicants contended that the Municipality owed them a constitutional duty to account. The Municipality opposed the application for leave to appeal.

In a unanimous judgment written by Froneman J, the Constitutional Court held that the scope for an independent constitutional right to require a 'duty to account' from the Municipality does not exist in this matter. One of the requirements for leave to appeal to this Court is the reasonable prospect of success on a constitutional issue. That requirement was not met in this matter. On the facts there is nothing that prevents the applicants from claiming the alleged overpayments from the Municipality in the normal course. All the information they need is already available to them or can be obtained in normal civil proceedings.