



CONSTITUTIONAL COURT OF SOUTH AFRICA

Bension Mphitikezi Mdodana v Premier of the Eastern Cape and Others

CCT 85/13

Date of hearing: 4 November 2013

Date of judgment: 25 March 2014

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.

Today the Constitutional Court dismissed an application for confirmation of an order of constitutional invalidity made by the Eastern Cape High Court, Grahamstown (High Court). The order relates to the constitutionality of certain provisions of the Pound Ordinance 18 of 1938 (Ordinance). This Court refused to confirm the High Court's order because there was no basis for it to assume jurisdiction.

The applicant, Mr Mdodana, is a subsistence farmer living in Lady Frere, in the Eastern Cape. In May 2010, Mr Mdodana's 91 goats went missing. Days later he learnt that they were impounded at the Lukhanji Municipal Pound (pound). Mr Mdodana was informed by authorities at the pound that he had to pay a fee of R41 157.20 to have his goats released. He could not afford this amount and sought legal assistance from the Legal Resources Centre (LRC). The LRC brought a two-part application in the High Court to have Mr Mdodana's goats released and to have the Ordinance declared unconstitutional and invalid.

Prior to the hearing at the High Court, an agreement was reached that Mr Mdodana's goats be released from the pound into his possession. The High Court only had to consider the constitutionality of the impugned provisions of the Ordinance.

The High Court found the impugned provisions to be unconstitutional, and declared them invalid for contravening the right to access to courts and unfairly discriminating against landless livestock owners. The order of invalidity was suspended for 12 months to give the Legislature an opportunity to remedy the defect. The High Court order also provided for judicial supervision of impoundment of livestock and sales in execution in the interim.

In this Court, Mr Mdogana sought confirmation of the High Court order of invalidity. The application was premised on the Ordinance being a provincial Act. Alternatively, it was argued that confirmation of the order is desirable so as to avoid the order of invalidity being applicable only in the Eastern Cape since the Ordinance also applies in the Western Cape and the Northern Cape. Counsel who appeared as friends of the Court (*amicus curiae*) submitted that impoundment is a necessary measure to deal with stray animals and that the impoundment section of the Ordinance is not unconstitutional.

In a unanimous judgment written by Dambusa AJ, this Court found that the Ordinance does not qualify as a “provincial Act” for purposes of confirmation prescribed by in terms of the Constitution. The Court held that because the Ciskei Pounds Act continues to apply in the same province on the same subject-matter, a conclusion that the Ordinance is a provincial Act would be improper. This Court found that the High Court order did not need to be confirmed by it to be effective.

Given that the Ordinance also applies in the Western Cape and the Northern Cape, this Court directed that a copy of its order be served on the Premiers of those provinces to alert the relevant authorities of the High Court’s order of invalidity.