

Transvaal Agricultural Union v Minister of Land Affairs and the Commission on Restitution of Land Rights

Case CCT 21/96

Explanatory Note

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

The Transvaal Agricultural Union applied for direct access to the Constitutional Court in terms of Constitutional Court Rule 17 read with s 100(2) of the interim Constitution. The Union sought an order declaring various sections of the Restitution of Land Rights Act 22 of 1994 and two of the rules regarding the procedure of the Land Claims Commission constitutionally invalid.

The Union challenged the constitutionality of provisions of the Act on the grounds that it authorised the Chief Land Claims Commissioner (the Commissioner) to publish, without granting landowners a hearing, a notice in the *Government Gazette* informing the public that land was subject to a claim for restitution. After publication the landowner was not entitled to deal with the property, could not evict claimants resident on the land nor remove or destroy any improvements on the land without the written permission of the Commissioner. According to the Union this violated the landowners' rights to fair administrative action, to property and to engage in free economic activity.

The Union also contended that the provisions of the Act empowering the Land Claims Commission to appoint mediators to assist it with resolving disputes were inconsistent with the Constitution in that the Constitution required the Commission to undertake all mediations itself, that the Commissioners act jointly in doing so, and that Parliament had no power to enact legislation which provided for mediators to be appointed by the Commissioner.

The Court dismissed the application for direct access. In terms of rule 17 direct access is granted in exceptional circumstances only: where the matter is of such urgency or public importance that ordinary procedures would prejudice the public interest or the ends of justice. In the present case the Court held that the requirements of this rule had not been met for the following reasons:

The delay in launching the proceedings did not evidence any pressing urgency in connection with the matter nor did the founding affidavit of the applicant point to any particular incident of prejudice suffered by the applicant's members or other landowners as a result of the publication of a notice, or as the result of the application of any of the provisions of the Act to which objection was taken. The Court noted that the objection to the Act was raised some seventeen months after the Act had been passed and more than nine months after the appearance of notices in terms of the Act.

The importance of securing a ruling on a matter of public importance as soon as possible was a consideration that was likely to present itself in all cases concerned with the validity of

Acts of Parliament. Therefore, it could not in itself be said to be urgent or an exceptional circumstance.

The Court held that the question whether landowners or other parties interested in the property had a right to fair administrative action before a notice was published, would depend upon the proper interpretation of the statute - which was a task for and within the jurisdiction of the Supreme Court. The mere fact that legislation does not specifically make provision for such a hearing does not mean that there is indeed no such right. A constitutional issue would only arise if the Supreme Court were to hold that on a proper construction of the Act, it required claims to be dealt with in a manner inconsistent with procedurally fair administrative action and it was therefore premature to approach this Court for a decision.

The Court held that there was, *prima facie*, nothing in the Constitution which deprived Parliament of the power to enact legislation which authorised the Commissioner to appoint mediators to assist in the settlement of disputed claims, or to delegate that power to some other person. In these circumstances, the Court held that the Supreme Court may hold that there was not sufficient substance in the applicant's contentions to warrant the issue being referred to the Constitutional Court.

The Court held that the applicant failed to establish that this was a case in which the ordinary procedures ought not to have been followed. There were important issues which were within the jurisdiction of the Supreme Court which needed to be resolved by it before this Court was approached for relief. And in respect of other issues there was neither the urgency nor the prospects of success necessary to justify direct access to the Court. The applicant was ordered to pay the costs of the abortive proceedings.

The judgment of the Court was delivered by Chaskalson P and was concurred in by the other members of the Court.