



CONSTITUTIONAL COURT OF SOUTH AFRICA

Maccsand v City of Cape Town and Others (the Chamber of Mines and Agri South Africa as Amici Curiae)

**Case No.: CCT 103/11
[2012] ZACC 7**

Minister for Mineral Resources v Swartland Municipality and Others

**Case No.: CCT 102/11
[2012] ZACC 8**

Date of Hearing: 8 November 2011

Date of Judgment: 12 April 2012

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 Thursday 12 April 2012, the Constitutional Court delivered judgments in applications for leave to appeal against judgments of the Supreme Court of Appeal. That Court had dismissed appeals brought by Maccsand (Pty) Ltd and the Minister for Mineral Resources against interdicts issued by the Western Cape High Court. The High Court had interdicted Maccsand from mining sand at the Rocklands and Westridge dunes in Michells Plain, Cape Town until both dunes were zoned to permit mining. In the second case the High Court had issued an interdict against Elsana Quarry (Pty) Ltd and the owners of the farm called Lange Kloof.

In October 2007 the Minister for Mineral Resources granted Maccsand a mining permit in respect of the Rocklands dune. In August 2008 the same Minister issued a mining right to Maccsand in respect of the Westridge dune. Both dunes are zoned as public open spaces in terms of the relevant provincial legislation. This means that mining cannot be carried out on them until they are appropriately rezoned. In February 2009 the Minister granted Elsana a mining right to mine granite on Lange Kloof farm for a period of 30 years.

In February 2009 Maccsand commenced mining operations without having the dunes rezoned. When the City of Cape Town pointed out that the mining was not done legally Maccsand contended that it was conducted in terms of the Mineral and Petroleum

Resources Development Act 28 of 2002 (national law). This was the law under which the mining right and permit were issued. In an application to the High Court, the City obtained interdicts restraining Maccsand from carrying out mining until the dunes were rezoned and permits were issued in terms of the National Environmental Management Act 107 of 1998 (NEMA). In the other matter Swartland Municipality in whose jurisdiction Lange Kloof falls also obtained an interdict in the High Court on the ground that the farm was not zoned to allow mining.

On appeal to the Supreme Court of Appeal, only the interdicts based on NEMA were set aside because at the time the High Court delivered its judgment, the notice in terms of NEMA on which they were based, had been withdrawn.

In this Court both Maccsand and the Minister for Mineral Resources argued that the provincial legislation that required rezoning does not apply to land used for mining. In support of this argument they submitted that mining falls under the exclusive competence of national government and to hold that provincial legislation regulating municipal planning applies to it would be tantamount to allowing municipal government to intrude into the terrain of the national sphere.

In rejecting this argument the Constitutional Court held that the provincial law and the national law served different purposes which fall within the competences of the local and the national sphere. Each sphere was exercising power allocated to it by the Constitution and regulated by the relevant legislation.

Although leave was granted in relation to interdicts based on the provincial legislation, the appeals were dismissed. The MEC for Local Government, Environmental Affairs and Development Planning: Western Cape had sought leave to cross-appeal against the refusal by the Supreme Court of Appeal to grant a general interdict based on NEMA. In the alternative, the MEC sought direct access. The Constitutional Court refused leave to cross-appeal and direct access on the basis that it was not in the interests of justice to grant either of the two requests.