



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Offit Enterprises (Pty) Ltd and Another v Coega Development Corporation (Pty) Ltd
and Others**

**CCT 15/10
[2010] ZACC 20**

Date of Judgment: 18 November 2010

MEDIA SUMMARY

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

On 18 November 2010, the Constitutional Court handed down judgment in a matter about section 25 of the Constitution which prohibits arbitrary deprivation of property. The applicants own approximately 505 hectares of land within the Coega Industrial Development Zone, a major government initiative to develop a new deepwater port at Coega and a surrounding industrial area in the Eastern Cape. The Coega Development Corporation (Pty) Ltd (the developer) has been authorised by the Department of Trade and Industry to undertake this development in terms of certain laws. The applicants' land is the only land in the development area over which the developer has been unable to obtain control.

The history of this matter reveals protracted negotiations, beginning in 2000, between the applicants and the developer; threats of expropriation by the developer; two previous unsuccessful attempts at expropriation and three instances of "spoliation" of the applicants' land by the developer's employees. In this Court, the parties were directed to focus their submissions on whether there has been a deprivation of property. The applicants argued that the cumulative effect of the above conduct amounted to an arbitrary deprivation of the full use and enjoyment of their property. They sought an order compelling the respondents to decide whether they intend to expropriate within a specified time.

In a unanimous judgment (per Skweyiya J), the Constitutional Court upheld the order of the Supreme Court of Appeal, and dismissed the appeal with costs. The judgment distinguished this matter from the other cases in the Constitutional Court on the basis that the present challenge targeted conduct rather than legislation, and that the bulk of the challenge dealt with "threatened" rather than "actual" conduct. The Court held that the applicants' complaints did not amount to a "substantial interference or limitation that goes beyond the normal restrictions on property use and enjoyment", and commented that the conduct of which the applicants

complained was not that which was envisaged by the protection afforded in the property clause of the Constitution. In conclusion, Skweyiya J re-iterated that property rights are not absolute and that, with large public schemes like the development in this case, individual landowners are bound to be affected.