IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Department of Land Affairs and Others v Goedgelegen Tropical Fruit (Pty) Ltd

Hearing Date: 8 March 2007
CCT 69/06

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.

The Court today gave judgment in a case concerning the rights of former labour tenants to restitution of land rights under the Restitution of Land Rights Act 22 of 1994. Section 2 of the Act provides for entitlement to restitution of rights in land where persons or communities were dispossessed of their rights as a result of past racially discriminatory laws or practices.

The claim was supported by the Department of Land Affairs. It was a community claim, alternatively a claim by nine individuals, for the restitution of rights in relation to land now consolidated into the farm Goedgelegen in Limpopo. The system of labour tenancy required the applicants to work on the land in return for a portion of land for purposes of residence, ploughing, grazing livestock and burial of deceased family members.

In 1970 the Minister caused a notice to be published in the Government Gazette prohibiting further labour tenants' contracts in areas including that in which the farm was situated. However, approximately one year before, the Altenroxel family, who had been farming the land as lessees at the time, had required that the labour tenant system on their farm be phased out.

The Land Claims Court found that the dispossession was not one from a community but from individual labour tenants. The Court found further that, whilst the individual claimants may have been dispossessed of rights held as labour tenants, the dispossession was not the result of past racially discriminatory laws or practices. Accordingly, the individual claims also failed.

The Supreme Court of Appeal dismissed an appeal on the grounds that by the time the notice was published, the claimants had already been deprived of their labour tenants' rights. The Court thus concluded that the dispossession was not the result of a past racially discriminatory law or practice.

Moseneke DCJ, writing for a unanimous Court, decided that, although the applicants have retained much of their identity as part of the erstwhile Popela clan, the acid test remained whether the members of the Popela community derived their possession from

shared rules in 1969. Because each of the families had been compelled to have their own separate relationship with the Altenroxel family, he concluded that by 1969 no rights remained vested in the labour tenants as a community.

He held further, however, that the dispossession was consequent upon and facilitated by a grid of repressive state laws and practices that allowed the vestiges of the labour tenancy system to be removed without demur. The impact of the laws and practices of government on the land interests of labour tenants had to be the primary focus.

In relation to remedy, Moseneke DCJ found it inappropriate to venture beyond a declaratory order and costs on the basis that the Court had heard no evidence of the possible remedies to be preferred. He thus made a declarator that the individual applicants were dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws and practices and that accordingly they are entitled to restitution under the Act.