



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others

CCT 41/13

**Date of hearing: 20 August 2013
Date of judgment: 20 November 2013**

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 handed down judgment in a matter regarding municipal and provincial responsibilities in relation to land-use approvals.

Lagoonbay Lifestyle Estate (Pty) Ltd (Lagoonbay) applied to the George Municipality and to the Minister of Local Government, Environmental Affairs and Development Planning, Western Cape Provincial Government (Provincial Minister) for certain land-use approvals in order to undertake a large-scale property development in the Southern Cape. Acting in terms of its powers under the Cape Land Use Planning Ordinance (LUPO), the George Municipal Council granted Lagoonbay approval for the subdivision and rezoning of the land. It then referred the approvals to the Provincial Minister for further authorisation. The Provincial Minister refused both applications.

Lagoonbay challenged the Provincial Minister's refusals in the Western Cape High Court, Cape Town (High Court). It argued that the Provincial Minister did not have the power to involve himself in rezoning and subdivision decisions, and that, in any event, the refusals failed to meet the standard for just administrative action prescribed by the Promotion of Administrative Justice Act (PAJA). The High Court dismissed Lagoonbay's arguments, reasoning that the scale of land use contemplated by the intended development had such significant effects on the surrounding region that any approval implicated not only municipal planning functions, but also regional and provincial planning as contemplated in Schedules 4 and 5 of the Constitution. The High Court dismissed the PAJA challenges.

On appeal, the Supreme Court of Appeal overturned the High Court's decision and held that, the Constitution precluded the Provincial Minister from making rezoning decisions. The Court concluded that the approval by the Municipal Council was the final authorisation required by Lagoonbay.

In a unanimous judgment authored by Mhlantla AJ, the Constitutional Court held that, under LUPO, the Municipality was not the competent authority to decide the rezoning application. While the Municipality was the competent authority to decide the subdivision application, it could only do so after the necessary rezoning approvals had been granted. The Constitutional Court did not decide the issue of whether the Constitution conferred the competence to decide on the rezoning and subdivision of land to provincial or municipal authorities. This was because the issue was not properly pleaded in this Court. Finally, the Court dismissed the challenges brought in terms of PAJA, finding that the Provincial Minister had a broad discretion to grant or refuse Lagoonbay's applications on the basis of their "desirability". Accordingly, the Constitutional Court dismissed the challenge to the Provincial Minister's rezoning decision and remitted Lagoonbay's subdivision application to the Municipality for reconsideration.