



## CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 75/10  
[2011] ZACC 15  
Decided on 21 April 2011

*Baphalane Ba Ramokoka Community v The Mphela Family & Others*

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### MEDIA SUMMARY

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*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 21 April 2011, the Constitutional Court delivered judgment in a case about its previous judgment in *Mphela and Others v Haakdoornbult Boerdery CC and Others*. The question was whether that judgment impinges on the Baphalane Ba Ramokoka Community's restitution claim to a farm called Pylkop, and, if it does, whether the *Haakdoornbult* judgment should be rescinded.

In 1998 the Community lodged a restitution claim for the farm Pylkop 26 JQ. That claim is currently pending before the Land Claims Court. The Community was not a party to the *Haakdoornbult* proceedings, which culminated in this Court's *Haakdoornbult* judgment in 2008.

In seeking rescission, the Community contended that the *Haakdoornbult* judgment was a decision pertaining to the farm Pylkop and that its constitutional right of access to courts was violated because it did not know about those proceedings. The Community argued that the judgment, or alternatively certain pronouncements within it relating to Pylkop, must be rescinded or expunged on the basis that it was erroneously granted in its absence.

The first respondent, the Mphela family, whose claim to the Haakdoornbult farm substantially prevailed in the *Haakdoornbult* judgment, opposed the rescission application. The Family sought costs on a punitive scale against the Community and the State represented by the Minister for Rural Development and Land Reform and the Regional Land Claims Commissioner for North West and Gauteng Provinces.

Pylkop was the farm to which the Mphela family was forcibly relocated under apartheid when it lost Haakdoornbult. Pylkop is currently registered in the name of a member of the Mphela Family.

The Court, in a unanimous judgment by Cameron J, held that the *Haakdoornbult* judgment does not impinge in any way on the Community's claim to Pylkop as it concerned Haakdoornbult alone. The Community's claim to Pylkop was unaffected by it. The Court found that the *Haakdoornbult* judgment contained no judicial rulings binding on the parties to the Pylkop claim because the parties, the cause of action, the relief sought and the issue in dispute were different.

On costs, the Court held that the Mphela family was entitled to costs only on the ordinary scale because the application was not frivolous, vexatious or improper. And during pre-trial sparring the Family's lawyer created confusion which in part triggered the Community's rescission application. The Court found that the State should be jointly and severally liable for the Family's costs because it made common cause with the Community's case and added to misguided imputations of unprofessional conduct on the part of the lawyers in the *Haakdoornbult* proceedings.

Finally, the Court granted a special costs order against the advocate who represented the Community because he unjustifiably accused the Mphela family's legal team of fraudulent conduct. These accusations compelled the Family to brief additional senior counsel. The Court ordered the Community's counsel to pay the costs of the Family's additional counsel out of his own pocket (*de bonis propriis*).