



CONSTITUTIONAL COURT OF SOUTH AFRICA

Agri South Africa v Minister for Minerals and Energy

Case CCT 51/12

Date of Hearing: 8 November 2012

Date of Judgment: 18 April 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.

This morning the Constitutional Court handed down a judgment dismissing an appeal against a decision of the Supreme Court of Appeal. Agri South Africa (Agri SA) brought an application against the Minister for Minerals and Energy (Minister) in the North Gauteng High Court, Pretoria (High Court). The essence of the application was that the commencement of the Mineral and Petroleum Resources Development Act (MPRDA) expropriated the coal rights of Sebenza (Pty) Ltd (Sebenza), which had been ceded to Agri SA. The application was successful. The Minister appealed the decision of the High Court to the Supreme Court of Appeal, which upheld the appeal. Aggrieved by that outcome, Agri SA appealed to the Constitutional Court.

In a majority judgment written by Mogoeng CJ the Constitutional Court held that, while the MPRDA deprived Sebenza of its coal rights, the deprivation did not rise to the level of expropriation at the time of the commencement of the MPRDA. This conclusion was supported by transitional arrangements which painstakingly protect pre-existing mineral rights and improved security of tenure; as well as the objects of the MPRDA to facilitate equitable access to the mining industry, promote sustainable development of South Africa's mineral and petroleum resources and to advance the eradication of all forms of discriminatory practises in the mining sector. The appeal was therefore dismissed.

In a separate judgment, Froneman J concurred in the outcome of the majority judgment, but for different reasons. Judge Froneman agreed that the appeal should fail based on the understanding that what Agri SA received in terms of the provisions of the MPRDA amounted to just and equitable compensation, albeit in kind, for what it had lost under the MPRDA. However, he disagreed that acquisition of property by the state is a necessary requirement for expropriation in all cases. According to Froneman J the contestation about past and future rights to property

must be done by interpreting the transitional arrangements in the MPRDA as seeking to give effect to the just and equitable compensation provisions under the Constitution, by providing past owners of minerals the opportunity of continuing to exploit the minerals in the transition, as well as giving them preferential treatment in acquiring new rights under the MPRDA.

In another separate judgment, Cameron J concurred in the majority judgment, but agreed with Froneman J that it is inadvisable to extrapolate an inflexible general rule of state acquisition as a requirement for all cases.