



CONSTITUTIONAL COURT OF SOUTH AFRICA

The Government of the Republic of Zimbabwe v Fick and Others

Case CCT 101/12

Date of Hearing: 28 February 2013

Date of Judgment: 27 June 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.

This matter involved the expropriation of the respondent farmers' land by the government of Zimbabwe (Zimbabwe) pursuant to its constitutionally-authorized land-reform policy. The farmers approached the Southern African Development Community Tribunal (Tribunal) for relief and the Tribunal decided in their favour. Zimbabwe failed to comply with its decision. The farmers again approached the Tribunal for relief. The Tribunal found in their favour and granted a costs order against Zimbabwe. Again Zimbabwe failed to comply.

The farmers approached the North Gauteng High Court, Pretoria (High Court) for the registration and enforcement of the costs order in South Africa. The High Court ordered the registration and execution of the costs order against property of Zimbabwe in South Africa. Zimbabwe applied to the High Court for the rescission of the order, which application was dismissed. Zimbabwe appealed unsuccessfully to the Supreme Court of Appeal. Aggrieved by that outcome, Zimbabwe sought leave to appeal to the Constitutional Court.

In a majority judgment, written by Mogoeng CJ, the Constitutional Court developed the common law on the enforcement of foreign judgments and orders to apply to those of the Tribunal. The majority held that the High Court correctly ordered that the costs order be enforced in South Africa. The Court held that that development was provided for by the SADC legal instruments on the enforcement of the decisions of the Tribunal in the region. The majority also held that the Constitution enjoins our courts to develop the common law in order to facilitate the enjoyment of the rights provided for in the Bill of Rights such as the right of access to courts, compensation

for expropriation and the rule of law, which in terms of the amendment to the Constitution of Zimbabwe would have been denied to the farmers had the costs order of the Tribunal not been enforced. For these reasons the appeal was dismissed with costs.

In a separate judgment, Jafta J would have dismissed the application for leave to appeal on the basis that it is not in the interests of justice to grant leave. He differs with the main judgment on the need to develop the common law since, in his view, the Supreme Court of Appeal had already developed it by extending the application of the rule under which foreign judgements are enforced to orders of international tribunals.

In a separate concurrence, Zondo J holds that on balance he agrees with the majority judgment that leave to appeal should be granted and with the reasons for dismissing the appeal. However, he disagrees with the reasoning that where a litigant has chosen specific grounds for impugning the jurisdiction of a court, it may not in later proceedings attack the jurisdiction of the first court on new or fresh grounds, which he holds is too widely stated in the main judgment.

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