



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**MEC: Department of Agriculture, Conservation and Environment and Another v HTF Developers (Pty)  
Ltd**

**Case CCT 32/07  
Medium Neutral Citation [2007] ZACC 25**

**Date of judgment: 6 December 2007**

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### MEDIA SUMMARY

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This case, an application for leave to appeal against a judgment of the Supreme Court of Appeal, concerns the relationship between two sections of the Environmental Conservation Act (ECA). Section 31A of the ECA empowers a named authority to direct any person who performs or fails to perform an activity that is causing or may cause damage to the environment, to stop the harmful activity or take remedial steps within a specified period. Section 32 of the ECA provides that a 30-day notice and comment procedure must be followed before directions are issued in terms of the ECA. The majority judgment of the Supreme Court of Appeal held that an exercise of power under section 31A of the ECA must comply with the 30-day notice and comment procedure.

In a unanimous judgment Skweyiya J stated that in interpreting the relevant sections of the ECA, he relied on the constitutional right to environment and the principles articulated by the National Environmental Management Act (NEMA), in particular the need to achieve socially, environmentally and economically sustainable development.

In his view, the observance of the 30-day notice and comment procedure is appropriate for directions generally applicable to members of the public, and not to directions applicable to a specific person or entity. Directions issued in term of section 31A are, however, subject to procedural fairness requirements in the form of section 36 of the ECA and administrative review under the Promotion of Administrative Justice Act. Further, the urgency of the situation may dictate the extent of the procedural fairness imposed on the administrator. This interpretation allows for sufficient procedural flexibility, which is necessary for organs of state to react to potential or actual environmental damage in a range of different time frames.

In a separate concurring judgment, Ngcobo J emphasised the importance of the NEMA principles in interpreting environmental legislation. He held that the provisions of section 31A were intended to give authorities the power to deal with immediate and imminent threats to the environment and that therefore its provisions should be interpreted in a manner that is consistent with this purpose of section 31A. Thus construed the exercise of powers under section 31A does not require the notice and comment procedure contemplated in section 32.

Moseneke DCJ, Sachs J and Van der Westhuizen J concurred in both judgments.