



CONSTITUTIONAL COURT OF SOUTH AFRICA

Giant Concerts CC v Rinaldo Investments (PTY) Ltd and Others

Case CCT 25/12

Date of Hearing: 4th September 2012
Date of Judgment: 29th November 2012

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 delivered a judgment dismissing an appeal against a decision of the Supreme Court of Appeal (SCA).

In 2003, through a law allowing a municipality to sell land by private sale rather than a public tender, the Ethekewini Municipality sold prime property on the Durban beachfront to Rinaldo Investments (Pty) Ltd (Rinaldo) as part of its plan to promote Durban as an international destination for film production. Rinaldo is a property-holding company ultimately controlled by film-maker Mr Anant Singh. The applicant, Giant Concerts CC (Giant), objected to the proposed sale and the Municipality rejected the objection. .

Giant asked the KwaZulu-Natal High Court, Pietermaritzburg to set aside the sale. The High Court decided in favour of Giant, holding that the decision was unlawful, procedurally unfair and unreasonable. It declared the agreement between the Municipality and Rinaldo void.

On appeal, the Supreme Court of Appeal reversed the finding of the High Court. It found that Giant had failed to establish legal standing to challenge the decision to sell the land to Rinaldo since it had not shown a sufficient interest in the subject matter of the dispute. Giant claimed to act in its own interest in terms of section 38(a) of the Constitution.

In a unanimous judgment for the Constitutional Court, Cameron J noted that Giant did not claim to act in the public interest or on behalf of a group or association or anyone who was not able to bring proceedings themselves. It therefore had to show standing on the basis of its own interest alone. The Court affirmed that constitutional own-interest standing is broader than traditional

common law standing. A litigant must nevertheless show that his or her rights or interests are directly affected by the challenged law or conduct.

The Court concluded that even on a broad approach to standing, Giant did not show that it had interests that were capable of being directly affected. This was because Giant never demonstrated that it had any serious commercial interest in the venture. In fact, Giant had failed to establish anything more than a hypothetical or academic interest. The Court found that Giant had no standing.

It held that when a party does not have standing, it is not necessary to consider the substance of the dispute, unless there is at least a strong indication of fraud or other gross irregularity in the conduct of a public body. There was nothing of the kind in the case before it. The appeal was therefore dismissed with costs.