

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another

Case CCT 78/07
Decided on 25 July 2008

Media Summary

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.

Constitutional Court handed down judgment in the matter of *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another*.

Today the Constitutional Court handed down judgment in an appeal by Wary Holdings (Pty) Ltd (Wary Holdings) against a judgment of the Supreme Court of Appeal. The appeal concerned a dispute between Wary Holdings and Stalwo (Pty) Ltd (Stalwo) over the meaning and applicability of a proviso to the definition of “agricultural land” as contained in the Subdivision of Agricultural Land Act 70 of 1970 (the Agricultural Land Act). The proviso provided that land within the area of jurisdiction of a transitional council that was classified as “agricultural land” immediately prior to the first election of the members of the transitional council would retain such classification.

Wary Holdings entered into a contract in 2004 in terms of which it agreed to sell to Stalwo land situated within the Nelson Mandela Metropolitan Municipality. It subsequently adopted the view that the contract was invalid, principally because the Minister of Agriculture had not consented to the sale of the land. Wary Holdings claimed that the Minister’s consent was required as the land was classified as “agricultural land” by virtue of the proviso. Section 3 of the Agricultural Land Act requires that the Minister of Agriculture give his or her consent in writing to any proposed sale or subdivision of “agricultural land” for the sale to be valid.

Transitional councils were established throughout the country in 1995, where previously local government structures had existed in only urban and semi-urban areas. This meant that all land now fell within the jurisdiction of a municipal council and would therefore, in terms of the Act as it stood, be excluded from the definition of “agricultural land”. The proviso was inserted to prevent this and preserve the status of “agricultural land”. Stalwo contended that the proviso was meant to preserve the status of “agricultural land” for a limited period only (ie for the duration of the existence of transitional councils which had since made way for extended municipalities) and so the Minister’s consent was not required here. Wary Holdings contended that the proviso was intended to preserve the status quo, presumably pending the introduction of new measures for the control of

agricultural land, and was still operative.

The Supreme Court of Appeal held that the proviso only applied during the existence of transitional councils and thus did not apply to this sale. It upheld the validity of the contract.

Before this Court, the Minister of Agriculture and Land Affairs was admitted as an intervening party. The Trustees of the Hoogekraal Highlands Trust and Safamco Enterprises (Pty) Ltd, who were sellers in a similar contract, were admitted as *amici curiae*. They supported the position of Wary Holdings and raised additional arguments relating to the proviso's legislative history and the constitutional importance of the Minister's power to regulate agricultural land.

In this Court Kroon AJ, writing for the majority, reasoned that the ordinary meaning of the words in the proviso read in the context of the whole Act, and its purpose, including the purpose of the proviso, inevitably led to the conclusion that the life of the proviso was not tied to the life of transitional councils. The reference in the proviso to land within the area of a transitional council was dictated by the factual position existing at the time, which had to be addressed. That was done by the proviso pinpointing the stage from which land classified as "agricultural land" would retain that classification, whatever development in local government structures had taken place. The enhanced status of present-day municipalities and the fact that they have extended powers was not a ground for ascribing to the legislature the intention that national control over "agricultural land" through the Agricultural Land Act effectively be a thing of the past. The proviso was therefore still applicable.

In a minority judgment, Yacoob J held that he would have dismissed the appeal on the basis that it did not raise a constitutional issue. The minority judgment preferred the meaning put forward by Stalwo, holding that the Minister is no longer required to consent to all subdivisions of "agricultural land" as the legislature has empowered municipalities to exercise this planning function with concurrent ministerial oversight.

The order of the Supreme Court of Appeal was accordingly reversed and the sale declared invalid and unenforceable.