



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Florence v Government of the Republic of South Africa**

**CCT 127/13**

**Date of hearing: 18 February 2014**

**Date of judgment: 26 August 2014**

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### **MEDIA SUMMARY**

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*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 handed down judgment in an application for leave to appeal against a judgment of the Supreme Court of Appeal. The main appeal concerned whether it is appropriate to use the Consumer Price Index (CPI) to convert past loss of land into present-day monetary terms for the calculation of financial compensation. The cross-appeal dealt with the duty of the state to bear the costs of erecting a memorial plaque on the property.

Ms Florence instituted a restitution claim for financial compensation under the Restitution of Land Rights Act (Restitution Act). Her claim related to the family home on which the Florence family lived for almost twenty years. Because the area was classified as a “White Group Area” under the apartheid legislation, the Florence family was forced to leave in 1970.

The Land Claims Court held that Ms Florence met the requirements for restitution and determined the amount of compensation due by escalating the value of the loss in 1970 to present-day monetary terms using the CPI. The Court found it lacked jurisdiction to make an order regarding the memorial plaque since it was the subject of a private agreement between the current property owner and the Florence family.

On appeal, the Supreme Court of Appeal affirmed the Land Claims Court’s decision to use the CPI as the method of conversion. However, the Supreme Court of Appeal overturned the Land Claim Court’s decision on the memorial plaque. The Court held that the Land Claims Court’s wide remedial discretion under the Restitution Act allowed it to order the state to pay for it.

The Constitutional Court granted Ms Florence leave to appeal. Writing for the majority, Moseneke ACJ (Skweyiya ADCJ, Dambuza AJ, Jafta J, Khampepe J, Madlanga J and Zondo J concurring) endorsed the reasoning of the Supreme Court of Appeal in *Farjas Pty (Ltd) v Minister of Agriculture and Land Affairs and Others* that the application of returns on investment on a historical loss is likely to result in overcompensation, which is at odds with the purpose of the Restitution Act. The market value of the property is but one of the factors which must be taken into account when determining what would be fair compensation. The majority judgment held that, on a proper reading of section 33 of the Restitution Act, the Land Claims Court and the Supreme Court of Appeal exercised their discretion properly in opting for the CPI to measure “changes over time in the value of money” and, subsequently, that the main appeal must fail. Moseneke ACJ upheld the cross-appeal, thus dismissing the claim for payment of costs of a memorial plaque. He concurred in the judgment by Zondo J on the cross-appeal.

Zondo J (Moseneke ACJ, Skweyiya ADCJ, Dambuza AJ Jafta J, and Madlanga J concurring) held that the Land Claims Court’s power under section 35 to grant “alternative relief”, relied upon by the Supreme Court of Appeal, is only available in a case where the relief of restoration of a right in land or equitable redress is not appropriate or competent. He found that this was not such a case as Ms Florence was granted just and equitable compensation which is part of equitable redress. He further held that in terms of the Restitution Act the remedy for dispossession of land is either restoration of a right in land or equitable redress. Zondo J, accordingly, upheld the Government’s cross-appeal and set aside the Supreme Court of Appeal’s order on the memorial plaque.

Van der Westhuizen J (Cameron J, Froneman J and Majiedt AJ concurring) rejected the use of the CPI, finding that it would not result in just and equitable redress in this case. Since the Restitution Act prioritises restoration of land, claimants who can only be compensated financially, should – as far as possible – be put in the same position as if the land had been restored to them. If no accurate current market value is available, the value of the property at the time of the loss must be adjusted to present-day value. The CPI is not an appropriate tool for adjustment because it measures the change in the costs of consumption, rather than returns on investment, and therefore does not adequately account for the loss of immovable property. While the 32-day notice deposit rate is not without shortcomings, it was the most appropriate measure available given the evidence before the Court in this case.

On the cross appeal, Van der Westhuizen J (Cameron J, Froneman J, Khampepe J and Majiedt AJ concurring) found that the Supreme Court of Appeal did have a discretion to award the costs of erecting a memorial plaque. Section 33 of the Restitution Act affords the courts wide remedial powers which are not affected by the agreement between the parties, especially as this agreement pertained to the display of the plaque at the property and not the costs thereof. For different reasons, Froneman J concurred in the judgment of Van der Westhuizen J in respect of both the appeal and the cross-appeal.