



CONSTITUTIONAL COURT OF SOUTH AFRICA

Turnbull-Jackson v Hibiscus Coast Municipality and Others

CCT 104/13

Date of hearing: 4 February 2014

Date of judgment: 11 September 2014

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 judgment in a case involving a dispute between neighbours in the town of Margate, located in the south coast of KwaZulu Natal. The case reached the Court as an appeal against an order of the KwaZulu Natal High Court.

At the centre of this dispute was the approval of building plans by the Hibiscus Coast Municipality under whose area of jurisdiction Margate falls. The case has a long history. Each time Pearl Star Investments 14 CC obtained approval to build a block of flats on its property, Mr Turnbull-Jackson succeeded to have the approval reversed in a municipal internal appeal. But on the third occasion, his attempts failed.

He then instituted a review application in the High Court, challenging the approval. In his application he accused the municipal official who approved the plans on each occasion of bias in favour of Pearl Star. He also complained that the plans did not meet the requirements of the relevant law. Relying on an earlier judgment of the Constitutional Court in *Walele*, he argued that the official who approved the plans did not satisfy himself that none of the disqualifying factors in those building plans existed before granting the approval.

The High Court rejected all the grounds on which the review was based. The High Court preferred to follow a judgment of the Supreme Court of Appeal (SCA) in *True Motives* where the SCA had declined to follow *Walele*. This approach by the High Court brought into sharp focus the question whether, in view of the principle of judicial precedent, the SCA was entitled to depart from a decision of the Constitutional Court which is a higher court to the SCA.

In a careful analysis, Madlanga J (with whom Moseneke ACJ, Skweyiya ADCJ, Dambuza AJ, Jafta J, Khampepe J, Majiedt AJ and Zondo J concurred), dismissed each of the grounds on which Mr Turnbull-Jackson relied.

With regard to the SCA's failure to follow *Walele*, Madlanga J held that the SCA was bound to follow *Walele* in *True Motives*. He found that the reasons advanced by the SCA for its departure from *Walele* did not justify the course adopted by the SCA. In essence, Madlanga J held that all courts, including the SCA, are bound to follow decisions of the Constitutional Court.

Froneman J (with whom Cameron J and Van der Westhuizen J concurred) agreed with the main judgment except with regard to the SCA's departure from *Walele*. He held that in *Camps Bay Ratepayers*, the Constitutional Court clarified and defined the scope of *Walele* and therefore there is no need to deal with the conflict between *Walele* and *True Motives* in this case.