THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 9 October 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Jooste and Another v Member of the Executive Council for Local Government Environmental Affairs & Development Planning: Western Cape and Others (637/2023) [2024] ZASCA 138 (11 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed the appeal against an order of the Western Cape Division of the High Court, Cape Town (the high court).

This appeal concerned the effect of a court order on review proceedings. It pertained to an environmental authorisation to conduct composting facilities granted in favour of the fourth respondent, the South African Farm Assured Meat Group CC (SAFAM), in terms of s 24 of the National Environmental Management Act 107 of 1998 (NEMA), authorising Listed Activities 4 and 28 of Listing Notice 1 of 2014 (Listed Activities). The appellants, interested parties who owned properties adjacent to the composting facility, had opposed the granting of the environmental authorisation on the basis that SAFM had unlawfully commenced with Listed Activities in breach of s 24F of NEMA. The high court dismissed the review application as well as the ancillary declaratory relief sought, holding that the appellants made out no case for relief. The appeal is with leave of the SCA.

SAFM's application for a waste management licence and environmental authorisation had gone through internal appeal processes, which were determined in the appellants' favour. SAFAM launched a review application against the dismissal of its application for a waste management licence and its internal appeal pertaining to its environmental application, to which the appellants were not parties. Various orders were sought against the MEC and the Department of Environmental Affairs and Development Planning (the Department). A central dispute in those proceedings was whether SAFAM had unlawfully commenced Listed Activities in breach of s 24F of NEMA. A settlement was reached between SAFAM and the Department, which culminated in an order being granted by consent in the Western Cape Division of the High Court on 18 October 2019, reflecting the terms of their settlement (the settlement order). After SAFAM complied with the requirements stipulated in the order, an environmental authorisation was granted in favour of SAFAM. After an unsuccessful internal appeal, the appellants launched the unsuccessful review application in the high court, raising the same issues as had been raised in the SAFAM review application.

The SCA held that one of the core objectives of court orders is bringing finality to litigation. The settlement order brought finality to the *lis* between SAFAM and the State respondents, which became *res judicata* and finally disposed of those issues. It is of no consequence that the source of the order was a settlement between the parties. Such order is an order like all others and will be interpreted as such. The settlement order is not a nullity but exists in fact and has legal consequences. It is binding

and must be complied with, obeyed and respected, irrespective of whether it has been correctly or incorrectly granted, until it is set aside.

Despite prior knowledge of the pending SAFAM review application that culminated in the settlement order, the appellants did not enter the fray or seek to intervene in those proceedings to raise any issue that may have adversely impacted on the settlement negotiations. After receipt of a copy of the settlement order, they took no steps to have the order rescinded or set aside. It was open to the appellants to challenge the order and seek its rescission, which they elected not to do. The appellants also did not seek any relief in respect of the settlement order in the review proceedings.

The SCA held that the appellants' collateral attempt to challenge the validity of the settlement order by way of review proceedings which sought to revive issues which have been resolved, was untenable. This is because the appellants' case relied on issues which preceded the settlement agreement and disregards its effect. The SCA held that the settlement order following upon the settlement agreement was dispositive of all of the grounds of appeal advanced.

The appellants sought to avoid the granting of a costs order against them by arguing that the application was not frivolous, was reasonable and was brought in the public interest as envisaged by s 32(2) of NEMA. The SCA held that considering: (a) the history of the matter, (b) the intemperate allegations in the founding papers in the face of the clear consequences of the unchallenged settlement order; and (c) the abandonment of a substantial portion of the appeal, the conclusion may well be inescapable that the appeal was frivolous and that the appellants acted unreasonably and not in the public interest in pursuing it. The appellants' spurious allegations led the State respondents to file an explanatory affidavit in the high court and to make written and oral submissions in the SCA. There was no reason to deviate from the normal principle that costs follow the result. The State respondents elected to abide the decision on appeal and no cost order was sought.

The SCA dismissed the appeal with costs in favour of the fourth to seventh respondents.

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