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: 22 December 2023

Status: Immediate

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Secona Freight Logistics CC v Samie and Others (1074/2022) [2023] ZASCA 183 (22 December 2023)

Today, the Supreme Court of Appeal (SCA) struck an appeal off the roll, with no order as to costs. The appeal was against an order of the KwaZulu-Natal Division of the High Court, Durban, per Henriques J (the high court), which dismissed a point *in limine* to the effect that the first respondent lacked *locus standi* to institute an application against the appellant and the second to ninth respondents.

The appellant was Secona Freight Logistics CC, a logistics company occupying Erf 329 Cato Manor, in terms of a lease agreement it concluded with the owner of the land, who was the second respondent, the Cato Manor Indian Cemetery and Crematorium Association, represented by its trustees. The first respondent was Mr Koobendran Samie, a resident of Yellowwood Park, bordering on Chatsworth and the south-west of Durban, KwaZulu-Natal. He identifies himself as a person of Indian origin and a senior environmentalist with the Environmental Planning and Climate Protection Department of the third respondent, the eThekwini Metropolitan Municipality. The second respondent was the Cato Manor Indian Cemetery and Crematorium Association, represented by its trustees, Mr Perumalsamy Chinnsamy Naicker NO, Mr Govindsamy Subramany Pillay NO and Mr Soan Seebran NO. The third to the ninth respondents were cited as interested parties, as part of the relief sought implicated them. All the respondents filed notices to abide the decision of the SCA. The third respondent filed an answering affidavit only to take issue with the costs order sought against it despite not opposing the application. The eighth respondent, Amafa aKwaZulu-Natali, responsible for the preservation of heritage sites in the province of KwaZulu-Natal, filed an affidavit in the high court to join issue with the appellant and the second respondent in relation to the point *in limine* and opposed the relief sought.

The facts of the matter were as follows. The first respondent sought an order interdicting and restraining the appellant and the second to ninth respondents from commencing any new, and continuing any existing activities on Erf 329 Cato Manor (the site), and for the imposition of certain duties and obligations on them to act as mandated in terms of environmental statutes. The appellant operated a container depot for the handling, storage and repair of freight containers on the site.

The matter came before the high court as an opposed application. And on the first day of the hearing, the appellant raised a point *in limine* that the first respondent did not have *locus standi*

to institute the application. To the contrary, the first respondent contended that he had *locus standi* to bring the application in terms of s 38 of the Constitution, which allowed him to pursue litigation in the public interest, and also in terms of s 32 of the National Environmental Management Act 107 of 1998 (NEMA). The parties agreed to a separation of issues in terms of rule 33(4) of the Uniform Rules of Court to deal with the point *in limine* (in respect of *locus standi* of the first respondent), first.

The issue before the SCA was whether the high court's order on the point *in limine* was appealable.

The SCA found that on the facts of this matters all indications pointed to one attribute: the order of the high court was interlocutory. The SCA found further that it was clear that the order of the high court did not possess any of the attributes articulated in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A). Nor was it appealable on any other ground, including the interests of justice. It followed that the matter was not appealable.

The SCA found that the anomaly arose as a result of the high court's decision to separate the issues without considering whether it was appropriate to do so. In that way, it confined itself to the single issue as it did. At para 3 of the order it postponed the application *sine die*. This aspect, amongst others, indicated that the high court perceived that the matter would still proceed on the dispute before it, even if differently constituted. The SCA found that the high court was alive to the fact that what it had decided, namely, the *locus standi* point *in limine*, was not dispositive of the whole matter.

The SCA cautioned that rule 33(4) if not appropriately applied, resulted in a proliferation of piecemeal appeals; a principle which the high court seemed to have overlooked. The SCA thus held that to entertain an appeal at this stage offended against its jurisprudence.

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