



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 17 April 2020

Status Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

South Durban Community Environmental Alliance v MEC for Economic Development, Tourism and Environmental Affairs: KwaZulu-Natal Provincial Government (Case no 231/19) [2020] ZASCA 39 (17 April 2020)

MEDIA STATEMENT

The SCA dismissed an appeal by the South Durban Community Environmental Alliance (the Alliance) against a decision by the KwaZulu-Natal Division of the High Court, Durban (the high court), in which an application for the review of a decision by the first respondent, the MEC for Economic Development, Tourism and Environmental Affairs: KwaZulu-Natal Provincial Government (the MEC), was refused. The second respondent, Capital Property Fund Limited, (Capital) wished to construct a logistics park in the South Durban Industrial Basin (the Basin) and applied for and received authorisation from the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs (the Department) in terms of s 24 of the National Environmental Management Act 107 of 1998 (NEMA), to do so. The appellant, which had opposed the grant of the authorization, thereafter unsuccessfully pursued an internal appeal to the first respondent, in terms of s 43 of NEMA. Central to the appeal

by the Alliance was the assertion that the logistics park would produce vehicular emissions of disproportionate scale and that the Basin and the communities residing within it, were at high risk for exposure to significant levels of ambient air pollution. Dissatisfied with the dismissal of the appeal, the Alliance then launched an application in terms of s 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), before the high court for the judicial review and setting aside of the decision of the MEC, and for the remittal of the matter to the MEC for reconsideration. The four grounds advanced by the Alliance for the review of the MEC's appellate decision, were identical to four of the grounds of appeal advanced by the Alliance in challenging the decision of the Department, in the appeal to the MEC. In other words, what were originally described as grounds of appeal, are now described as grounds of review. In dismissing the application on its merits, the high court concluded that the Alliance had not put forward any evidence in support of its complaints and assertions, with regard to air quality. The SCA pointed out that the conflation of grounds of review with grounds of appeal, gave rise to difficulties which were compounded by the inherent problems that may arise, in distinguishing between review and appeal proceedings. The SCA also pointed out this may well have been the kind of matter, where both the decision of the Department and the MEC, should have been challenged. The SCA pointed out that, this in and of itself, ought to have led to the failure of the Alliance's application before the court below. The SCA however made no finding in this regard and proceeded to consider the merits of the four grounds advanced by the Alliance that the high court erred in refusing to review the appellate decision of the MEC. The SCA pointed out that because all four grounds were based upon alleged errors of fact on the part of the MEC, the Alliance in order to succeed had to demonstrate that the MEC had failed to consider uncontentious and objectively verifiable facts, which were material in nature and which would have resulted in a different decision, had they been taken into account by the MEC. The SCA then dismissed all four grounds of appeal but ordered that an adverse costs order should not be made against the Alliance, on the basis that it had acted only for the benefit of the community to assert its constitutional right, 'to an environment that is not harmful to their health or well-being'.