



**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:** 15 August 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***

*South African Human Rights Commission v Agro Data CC & Another (Afriforum, Centre for Applied Legal Studies and Commission for Gender Equality intervening as Amici Curiae) (39/2023) [2024] ZASCA 121 (15 August 2024)*

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Today the Supreme Court of Appeal (SCA) handed down judgment wherein it dismissed an appeal with no order as to costs, against an order of the Mpumalanga Division of the High Court, Mbombela (the high court).

Around May 2018, the South African Human Rights Commission (SAHRC) received a complaint from Mr. William Trinity Mosotho on behalf of his elderly father, Mr. Tubatsi Mosotho, and other occupiers of a farm in Doorhoek, Mpumalanga (the farm). The complainant alleged that in 2016, Mr. Francois Gerhardus Boshoff (Mr. Boshoff) unilaterally introduced restrictions on the occupiers' use of borehole water on the farm, depriving them of access to the water source.

The SAHRC investigated the complaint and found that Agro Data CC and Mr Boshoff (the respondents) had violated the occupiers' rights to access water in terms of s 6(2)(e) of the Extension of Security of Tenure Act 62 of 1997 (ESTA) and s 27(1)(b) of the Constitution. The SAHRC also concluded that the occupiers' right to dignity under s 10 of the Constitution had been infringed.

In September 2019, the SAHRC issued directives to the respondents, ordering them to inter alia, restore the supply of borehole water to the occupiers, commence engagement with the occupiers on the management of water on the farm, and provide the occupiers with relevant information, including scientific reports and costs related to the water supply.

When the respondents failed to comply with the directives, the SAHRC launched an application in the Mpumalanga Division of the High Court (the high court), seeking declaratory relief. In September 2020, the high court dismissed the SAHRC's application for declaratory relief but ordered the respondents to make relevant information available to the occupiers for the purpose of meaningful engagement on water management. The high court also ordered the SAHRC to facilitate the engagement. Dissatisfied with the outcome, the SAHRC sought leave to appeal this Court from the high court, which was granted.

The main issue on appeal was whether the SAHRC has the power to issue binding directives under s 184(2)(b) of the Constitution, read with s 13(3) of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act).

The SCA dismissed the SAHRC's appeal, concluding that the SAHRC's directives are not binding and that the respondents can only be compelled to comply with the directives through a court order. The Court held that the SAHRC's powers are distinguishable from those of the Public Protector, which were found to be binding in the case of *Economic Freedom Fighters v Speaker of the National Assembly and Others*.

The SCA emphasised that the SAHRC is an independent Chapter 9 institution subject only to the Constitution and the law, and that its directives are not self-executing. The Court further held that while the SAHRC has the power to investigate and report on human rights violations, it must approach a court to secure appropriate redress where rights have been violated.

As a result, the SCA dismissed the SAHRC's appeal with no order as to costs.

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