



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: 02 December 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

The Minister of Department of Rural Development and Land Reform and Others v Thamsanqa Davis Bisset (982/2023) [2024] ZASCA 164 (2 December 2024)

Today, the Supreme Court of Appeal (SCA) handed down judgment, in which it upheld an appeal against an order of the Land Claims Court, Randburg (the high court), which had reviewed and set aside a purported ‘settlement agreement’ under s 42D of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act).

This matter arose from the dispossession of the Bisset family’s land in Gqeberha in 1972 due to racially discriminatory laws. In April 2008, the respondent, Mr Thamsanqa Davis Bisset (Mr Bisset), acting on behalf of the family, signed a document titled ‘Settlement Agreement under Section 42D’. Years later, in September 2021, Mr Bisset brought proceedings to declare the settlement agreement invalid, asserting that it did not reflect an amount for emotional suffering of the Bisset family. The appellants defended the legality of the settlement agreement.

The high court found in favour of Mr Bisset, holding that the settlement agreement failed to address the financial and non-financial factors mandated under s 33 of the Restitution Act. The high court declared the agreement invalid and set it aside. The appellants were given leave by the high court to appeal to this Court.

The SCA held that although Mr Bisset signed the document in 2008, there was no evidence of concurrence by representatives of the Department, as required under s 42D. Consequently, there was no agreement to review or set aside. The Court further held that the Department did not act upon the purported agreement by providing compensation or otherwise; the parties had resumed negotiations, further indicating the absence of the conclusion of an agreement.

The SCA held that the high court had no power to declare invalid, review and set aside a document that did not constitute an agreement. In the language of public law, the high court enjoyed no competence to review and set aside something that was not yet a decision amounting to administrative action.

As a result, the SCA upheld the appeal and replaced the high court's order with an order dismissing Mr Bisset's application. No costs were awarded.

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