



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

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Status: Immediate

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Sand Hawks (Pty) Ltd and Another v Labonte 5 (Pty) Ltd and Others (190/2023) [2024] ZASCA 122 (16 August 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein it dismissed the appeal with costs, including the costs of two counsel where so employed, against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

This matter involved an appeal by Sand Hawks (Pty) Ltd and Seacrest Investments 129 (Pty) Ltd (collectively referred to as 'Sand Hawks') against Labonte 5 (Pty) Ltd (Labonte) and various governmental respondents, including the Minister of Mineral Resources and Energy, the Director-General of the Department of Mineral Resources and Energy and the Regional Manager of the same Department. The dispute arose over mining rights for sand on portions of the farms Ehrenbreitstein and Wonderboomhoek (the property) in Limpopo Province. Labonte applied for these mining rights under the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) on 23 July 2010. The Regional Manager initially accepted Labonte's application partially, excluding the contested properties based on the erroneous belief that another entity, Sungu Sungu Mining (Pty) Ltd, held rights to the same minerals over the property.

In August 2011, Sand Hawks submitted their applications for mining permits over the same properties, which were accepted later that month. Following Sand Hawks' accepted application by the Regional Manager, Labonte lodged another application at the advice of the Department to address the Regional Manager's error. Labonte was eventually granted mining rights in March 2017 by the Deputy Director-General (DDG). More than a year later, Sand Hawks subsequently lodged an internal appeal in terms of s 96 of the MPRDA against this decision, claiming the Regional Manager was *functus officio* after his initial partial acceptance of Labonte's application. On 19 December 2019, the Director General upheld Sand Hawk's appeal. Labonte then sought to review the decision of the Director General in the high court in terms of the provisions of the Promotion of Access to Justice Act 3 of 2000 (PAJA) on four grounds, including the Director General's failure to apply their mind to the issue of condonation as the Sand Hawks' application was lodged almost 13 months after the DDG had granted Labonte its mining rights and five years after the Regional Manager had advised Labonte he would accept its application in full.

The high court found in favour of Labonte and held that the law regarding *functus officio* applies only to final decisions. The Regional Manager's decision was not final but a preliminary step, allowing for subsequent corrections. It found that although the Regional Manager's decision was preliminary, it was an 'administrative decision' as contemplated under s 96(1)(a) of the MPRDA. Further, the high court held that the Director-General failed to properly consider the circumstances surrounding the late appeal. However, the high court did not deal with the issue that Sand Hawks did not file any application for condonation for the late filing of the appeal. Rather, it remitted the issue to the Regional Manager.

The central issues on appeal in this Court were whether the Director-General's decision to condone the late filing of Sand Hawks' appeal was lawful; and whether the Regional Manager was *functus officio* regarding his prior decision to partially accept Labonte's application and therefore, the high court correctly reviewed and set aside the Director-General's decisions.

In this Court, Sand Hawks argued that the Regional Manager could not revise his initial decision because it was final and conclusive. Labonte, on the other hand, contended that the Regional Manager's decision was preliminary and not final, thus allowing for correction. They argued that the Director-General failed to consider relevant facts regarding the late filing of the appeal and that the high court's order to review the Director-General's decisions was justified.

The SCA upheld the high court's findings and held that the Regional Manager's decision was indeed preliminary, and he retained the authority to correct his earlier error. The SCA further found that the Director-General's decision to condone the internal appeal lodged by Sand Hawks be declared unlawful and set aside in terms of s 6(2)(d) of PAJA as it was materially influenced by an error of law. The Court reiterated the importance of fairness and justice in administrative decision-making, particularly in complex matters and interrelated appeals.

As a result, the SCA dismissed the appeal with costs, including the costs of two counsel where so employed.

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