



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: 27 May 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

Snowy Owl Properties 284 (Pty) Ltd and Others v Mziki Share Block (Pty) Ltd (642/2022) [2024] ZASCA 79 (27 May 2024)

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (per Chili J) (the high court), which granted a final interdict prohibiting the breach of rights of servitude.

The appeal, with the leave of the SCA, arose from a long-standing conflictual relationship between neighbouring owners of property. Snowy Owl Properties 284 (Pty) Ltd (Snowy Owl) and Mziki Share Block (Pty) Ltd (Mziki), own large adjacent tracks of land in northern KwaZulu-Natal. Their predecessors had, by agreement, established a private game reserve spanning their respective properties. A notarial agreement of servitude was registered over Snowy Owl's properties, conferring on the members of Mziki a right to traverse and access all existing roads on the Snowy Owl properties for the purposes of game viewing.

In July 2017, Snowy Owl dug up certain roads on its property and caused them to be blocked. Mziki was denied use of the roads to obtain access to part of Snowy Owl's properties. Snowy Owl asserted that it was acting to prevent ecological damage and that the closure was necessary. It also claimed that closure was required for maintenance.

The dispute was referred to arbitration. In April 2020, an arbitration award was issued. The arbitrator found that the destruction and closure of roads was in breach of Mziki's rights of servitude and that the closure was not required in order to comply with environmental legislation. The arbitrator ordered that the roads be re-opened and rehabilitated.

Snowy Owl did not comply with the award. This prompted Mziki to bring an application before the high court to make the award an order of court (the award application). Snowy Owl opposed the application. It did so on the basis that the award could not be carried into effect because it required Snowy Owl to undertake actions which were in breach of environmental legislation. It took the view that the closure of roads was authorised by an environmental management plan.

In October 2020, prior to the award application being heard, Snowy Owl commenced digging another portion of road. Mziki launched an urgent application to prohibit Snowy Owl from further breaching its rights of servitude and to restore access to those roads.

An interim order was granted, by agreement between Snowy Owl and Mziki, on 22 October 2020. The return date was set for 4 December 2020, when the award application was to be heard.

On 4 December 2020, Radebe J heard the award application. The interdict application was postponed to allow the award application to be decided.

On 18 February 2021, the arbitration award was made an order of court. On 26 February 2021, the interdict application was heard by Chili J. A final order was granted on 19 October 2021.

Snowy Owl appealed against the order of Radebe J to the SCA. The SCA dismissed the appeal on 19 January 2023. On 28 September 2023, the Constitutional Court refused Snowy Owl leave to appeal against the SCA order.

Following Chili J's granting of a final interdict (on 19 October 2021), Snowy Owl was granted leave to appeal it. The SCA granted leave before the appeal against Radebe J's order was heard.

Prior to the hearing of the appeal against Chili J's interdict order was heard, Snowy Owl was requested to explain its reason for persisting with the appeal given the final determination of the substantive issues concerning Mziki's servitude rights. At the hearing it was submitted that the appeal was warranted, because Chili J was not entitled to grant final relief because of the pending appeal at that stage.

The SCA rejected the argument. It found that the basis for the interdict was an admitted breach of Mziki's servitude rights. Despite raising similar same defences as had been raised in the award application, those defences did not answer the claim for an interdict to prevent further ongoing breaches of the servitude rights. Chili J had not decided any questions which had been subject to an appeal. The SCA therefore found that Chili J had correctly granted the final interdict.

It held that since the SCA, with endorsement from the Constitutional Court, had finally decided Snowy Owl's other defences, it had pursued a meritless appeal. The SCA therefore dismissed the appeal with costs on the scale between attorney and client.

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