

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 23 March 2005

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

On 23 March 2005 the Supreme Court of Appeal handed down judgment in *Transvaal Agricultural Union v The Minister of Agriculture and Land Affairs, The Chief Land Claims Commissioner NO and Others*, in terms of which it dismissed an appeal by the Transvaal Agricultural Union against a judgment of the Land Claims Court (the LCC) in favour of the Minister of Agriculture and Land Affairs, the Chief Land Claims Commissioner and others.

This Court held that the application by the Transvaal Agricultural Union (TAU) in the LCC, in which it sought a number of declaratory orders impacting on the manner in which the Commission on Restitution of Land Rights and the Minister went about their tasks in terms of the Restitution of Land Rights Act 22 of 1994 was ill-conceived and badly structured.

The TAU had complained that the Department of Land Affairs, the Minister and the Commission adopted policies and behaved in a manner that prejudiced their members and favoured claimants.

This court considered that the order sought would affect claimants and farmers not joined in the proceedings in the Land Claims Court. It also took into account that the Transvaal Agricultural Union was seeking advice in general terms which courts are loath to give unless based on specific facts.

This Court took into account that the critical facts on which the TAU relied were denied by the Minister and the Commission, with substantiation, and that this by itself presented an insurmountable obstacle to the orders sought.

The SCA held that TAU, in complaining that its members were not provided with an early opportunity to be heard when claims were lodged with the Commission, mistook early investigatory steps as being an adjudicative process.

In dealing with the TAU's complaint that the Commission did not provide it with information to which it was entitled, the court considered the Commission's explanation that it usually provided

such information as was at its disposal but that it did so generally, only after a notice of a land claim had been published but even then, this policy was not cast in stone. The court held that an order compelling the Commission to supply information could not be made in isolation.

The court held that the Land Claims Court was correct in dismissing the application by the TAU and dismissed the appeal with costs.

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