

Supreme Court of Appeal of South Africa

MEDIA ALERT – STALWO v WARY HOLDINGS

From: The Registrar, Supreme Court of Appeal

Date: 28 September 2007

Status: Immediate

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

The Supreme Court of Appeal today upheld an appeal against a judgment of the Port Elizabeth High Court in which it dismissed the appellant's application to have the parties' agreement of sale of land declared binding on them, unconditional and of full force and effect and declined to order the respondent to pass transfer of the land to it.

The issues in the appeal were whether the agreement (a) offended against the provisions of (a) s 2(1) of the Alienation of Land Act 68 of 1981 because it failed to record a material term upon which the parties had expressly agreed, that the sale was conditional upon the success of a subdivision and rezoning application to the relevant local authority and (b) whether the land (which now fell under the jurisdiction of Nelson Mandela Metropolitan Council having previously been under the jurisdiction of the Port Elizabeth Transitional Rural Council) was 'agricultural land' as contemplated in the definition of 'agricultural land' in s 1 of the Subdivision of Agricultural Land Act 70 of 1970 which excludes land within a municipality; in which event it would be rendered invalid because permission had not been obtained for the subdivision and sale of the land from the Minister of Agriculture in accordance with s 3 of this Act.

The SCA decided both issues in the appellant's favour. Regarding the first issue, it was found that a tacit term could be imported into the parties' contract

that it was subject to the suspensive condition as it was clear that they intended to contract on that basis, whether or not that term was expressly agreed upon.

The second issue turned on the interpretation of the proviso in s 1 of the Subdivision of Agricultural Land Act which excludes from the exceptions set out in the definition 'land situated in an area of jurisdiction of a transitional council as defined in s 1 of the Local Government Transition Act 209 of 1993, which immediately prior to the first election of the members of such transitional council was classified as agricultural land'. The SCA held that the Nelson Mandela Metropolitan Council is a municipality as contemplated in the definition. It held further that the proviso must be interpreted restrictively, as it is an exception to the general rule, and within the context of the legislative scheme which guided the restructuring process of local government which was to use existing statutory provisions (such as the proviso) until new ones could be enacted.

The SCA held that the proviso was an interim measure which was meant to operate only for as long as the land envisaged therein remained situated in the jurisdiction of a transitional council. The SCA concluded that the land lost its historical character as agricultural land once it was brought within the Nelson Mandela Metropolitan Municipality and that, accordingly, it did not fall within the purview of the Subdivision of Agricultural Land Act.