



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 23 September 2011
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Louw NO v Swartland Municipality
(650/10) [2011] ZASCA 142 (23 September 2011)
Media Statement

Today the Supreme Court of Appeal (SCA) delivered judgment dismissing the appeal by the appellants against the finding of the Western Cape High Court, Cape Town that the grant of a mining right issued by the Minister of Mineral Resources in terms of s 23 of the Minerals and Petroleum Resources Development Act 28 of 2002 (the MPRDA) does not entitle the holder of that right to undertake mining operations without obtaining authorisation in terms of the Land Use Planning Ordinance 15 of 1985 (LUPO). This ordinance, operative in the provinces that formerly comprised the province of the Cape of Good Hope, empowers municipalities to determine and enforce the use to which land in their areas of jurisdiction may be put.

The facts and history of this matter can be summarised as follows:

In terms of LUPO, Lange Kloof was and is zoned 'agricultural 1' which means that the land may be used for the cultivation of crops or plants, the breeding of animals or be left as natural veld. Hugo Louw Trust, owners of the farm Lange Kloof, gave consent to Elsana Quarry (Pty) Ltd to mine granite on the farm. An application for rezoning of the property from 'agricultural I' to 'industrial III' was made to the Swartland Municipality but was withdrawn after the Department of Mineral Resources advised the parties that the granting of mining rights was the exclusive preserve of the national government and authorisation under LUPO was not required.

Elsana commenced preparations to mine granite on Lange Kloof. The Municipal Manager of the Swartland Municipality informed the Hugo Louw Trust that the land was not zoned for mining, that the mining activities had to cease and that they had to apply for rezoning of the land. The trust's attorneys wrote to the municipality to inform it that Elsana had been granted a mining right and that as a result the demand that mining operations should cease had no basis in law. An urgent application was launched by the Minister against the trustees of the trust, Elsana and the Minister seeking to interdict mining operations until the property had been rezoned in terms of LUPO. The interdict was granted by the court below.

The SCA held that MPRDA does not concern itself with land use planning and the Minister, when she considers the grant of a mining permit, does not, and probably may not, take into account such matters as a municipality's integrated development plan or its scheme regulations. As a result, the MPRDA does not provide a surrogate municipal planning function in place of LUPO and does not purport to do so. Its concern is mining, not municipal planning.

LUPO thus operates alongside the MPRDA with the result that once a person has been granted a mining right in terms of s 23 of the MPRDA he or she will not be able to commence mining operations in terms of that right unless LUPO allows for that use of the land in question.

The appeal was as a result dismissed with costs.

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