



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

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

*Erf 16 Bryntirion (Pty) Ltd v Minister of Public Works
(914/10) [2011] ZASCA 246(1 December 2011)*

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant, Erf 16 Bryntirion (Pty) Ltd (Bryntirion), against a decision of the respondent, the Minister of Public Works (the Minister) to expropriate Erf 16 Bryntirion (the property), being immovable property owned by the appellant, and situated within the Bryntirion Estate which incorporates the Presidential Residence, the Presidential Guesthouse and the houses of cabinet ministers.

The reasons given by the Minister for the expropriation were the following:

1. The property was the only private property within the Bryntirion Estate;
2. The positioning of the property on the estate made it impossible to cordon off the entire estate for effective security measures; and
3. The Government intended to upgrade the estate with a view to enhancing the security planning for the estate as a whole.

It was contended that the Minister's decision was irrational in that irrelevant considerations were taken into account and relevant considerations were not considered. It was argued that incorrect facts regarding the new entrance to the proposed Estate, were placed before the Minister. The information placed before the Minister was to the effect that the new main entrance to the estate would be in Colroyn. This was incorrect. The SCA nevertheless found that the Minister's decision was not irrational. The court found that the main reason for the expropriation of the property was that it could fall within the Estate so that security concerns could be effectively addressed. The fact that the Minister may have been given incorrect information as to where the main entrance to the Estate would be situated was irrelevant.

The Minister's decision to expropriate the property was 'administrative action' as defined in s 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and which materially and adversely affected Bryntirion's rights. Administrative action which materially and adversely

affects the rights or legitimate expectations of any person must be procedurally fair. It was argued that the process was not procedurally fair in that Bryntirion was not given sufficient information in order to make meaningful representations as to why the property should not be expropriated. It was further contended that Bryntirion was not given adequate notice of the nature and purpose of the proposed administrative action, nor was it given a reasonable opportunity to make representations in regard to the proposed expropriation. The SCA found that the ultimate purpose of the expropriation, namely to make the Bryntirion Estate a single geographic unit, was set out in the various communications sent by the Department to Bryntirion. Bryntirion was invited to make representations on four occasions. Representations were in fact made on two occasions. The court held that it was clear from the representations made by Bryntirion that it had been given sufficient information regarding the underlying reasons for and the purpose of the expropriation. Bryntirion did not need to know precisely what measures would be taken. In these circumstances, it cannot be said that the procedure adopted was unfair.

The court stated that it is for the expropriating authority to decide how best to achieve its purpose. The evaluation of whether an expropriation is expedient or necessary lies with the expropriating authority. The fact that there are other ways to achieve the purposes of the expropriation is irrelevant provided that the expropriation is for a 'public purpose'.

The appeal was dismissed with costs.

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