



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 September 2012

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.

MTN v SMI

The Supreme Court of Appeal today dismissed an appeal by MTN against the judgment and order of the South Gauteng High Court in Johannesburg ordering MTN to remove its base station on the farm Langgewacht in the district of Vryheid. The base station was constructed on a site on the farm some 110 m² in extent. It consists of a mast, a container room and equipment. The farm itself comprises 1090,4565 hectares. The lease was for a period of 9 years and 11 months commencing on 1 February 1998 renewable at the option of MTN by giving 3 months' notice prior to its

expiry. The agreement entitled MTN to construct and maintain a base station on the property and obliged it to pay to the lessor an initial rental of R100 per month, escalating at 10% per annum. MTN was entitled to enter onto the farm so as to gain access to the station. The lessor had to allow MTN's agents and employees 24 hour access per day but was entitled to require them to identify themselves. The lease expired on 31 January 2008, MTN not having elected to renew it. In justifying its continued occupation of the farm MTN relied on section 22 of the Electronic Communications Act 36 of 2006 which entitles an electronic communications network service licensee such as MTN to enter upon any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic; construct and maintain an electronic communications network or electronic communications facilities upon, under, over, along or across any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic; and alter or remove its electronic communications network or electronic communications facilities, and may for that purpose attach wires, stays or any other kind of support to any building or other structure. Because the exercise of its powers under this Act constitutes administrative action they must be exercised lawfully, reasonably and procedurally fairly. The SCA found that in the circumstances of the case MTN's holding over after expiry of the lease was unlawful and could not be justified in terms of s 22. Not only was its remaining in occupation arbitrary but also not pursuant to a 'decision' as required by the Promotion of Administrative Justice Act 3 of 2000.