



## 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** 30 November 2012  
**STATUS** Immediate

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

***Makhanya & another v Goede Wellington Boerdery (Pty) Ltd  
(230/12 & 233/12) [2012] ZASCA 205 (30 November 2012)***

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Minister of Water and Environmental affairs against a decision of the North Gauteng High Court, Pretoria, in which it reviewed and set aside a Tribunal in terms of the National Water Act's decision to refuse the transfer of a licence to use water for farming purposes from one farm to another. The high court further substituted its order for that of the Tribunal and granted costs against its presiding officer.

The SCA upheld the appeal against a costs order and found that it would be inequitable to mulct an official with costs where his action, though mistaken, was bona fide.

The SCA, found that the actions performed by the Tribunal in considering an appeal from an official constituted administrative action in terms of PAJA and thus is reviewable. The actions of the Tribunal amounted to an error in law in considering only one of a number of relevant factors applicable in the granting or transfer of water licences. The decision was also unreasonable and stood to be set aside. The court further found that exceptional circumstances existed that allowed a court to substitute its order for that of an administrative Tribunal. Hence it issued the following order:

1. The appeal of the first appellant is upheld with costs including the costs of two counsel.
2. The appeal of the second appellant is dismissed with costs including costs of two counsel.
3. The order of the court a quo is amended to read:

(1) The decision taken on 5 May 2010 by the First Respondent, dismissing the

Applicant's appeal against the refusal by the Chief Director: Water Use in the Department of Water Affairs and Forestry of the Applicant's application for a licence to use water from the Berg River is reviewed and set aside.

The said decision is substituted with the following:

- '1. The appeal by Goede Wellington Boerdery (Pty) Ltd against the refusal on 11 April 2008 by the Chief Director: Water Use in the Department of Water Affairs and Forestry of the Applicant's application for a licence to use water from the Berg River to which ECPA Boerdery (Pty) Ltd is currently entitled', is upheld.
2. The said licence is granted to Goede Wellington (Pty) Ltd.'
3. The Second Respondent is to pay the Goede Wellington's costs, including the costs of two counsel.'