



## 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** 1 June 2012  
**STATUS** Immediate

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

***King Sabata Dalindyebo Municipality and Others v Kwalindile Community and Others (537/11) [2012] ZASCA ( 1 June 2012)***

#### **Media Statement**

Today the Supreme Court of Appeal (SCA) delivered judgment upholding an appeal from the Land Claims Court (LCC). The appeal was brought by among others the King Sabata Dalindyebo Municipality and responded to by among others the Regional Land Claims Commissioner: Eastern Cape (Regional Commissioner) and the Minister of Agricultural and Land Affairs (Minister).

The appeal centred on an order issued by the LCC in terms of section 34 of the Land Rights Act 22 of 1994 (Act). The section allows for any national, provincial or local government body to make application to the LCC for an order that the land the government body owns, or which falls within its jurisdiction, shall not be restored to a land claimant or a prospective claimant. Section 34(5) empowers the LCC to make any order it deems fit.

The LCC had to decide whether it was in the public interest that the rights in land should not be restored to any claimant and whether the public would suffer prejudice unless the order applied for was issued. The court did not agree with the municipality's contention that a development on the land in question, including a casino, a retail complex and an upper class suburb would significantly be in the public interest, having particular regard to the shareholding in these developments. It did find however that it would be in the public interest not to restore to any claimants any portion of the land. It found that indeed it would be against the public interest if the order were not granted. The failure to grant the order could stifle or slow down development due to uncertainty in the outcome of the claims to the detriment of the entire community.

The court however did not grant the section 34(5) order without more; it attached conditions to the order as it reasoned the King Sabata Dalindyebo Municipality had had a “poor track record . . . in complying with the spirit and letter of the Delegations [which granted it rights to the land], the Constitution and the Act”. It reasoned that it was laying down the conditions to, among other things, address concerns borne out of its taking “judicial notice of the high levels of corruption, factionalism and greed that have assailed our national and local government structures such as might lead to chaos and social upheaval if not subjected to scrutiny and transparency.”

The SCA found that these comments by the LCC did not enjoy persuasive foundation in the evidence. What is more, the SCA found the LCC had incorrectly stressed the position of present and prospective land claimants. The court found that the orders of the LCC sought to clothe the Minister and the Regional Commissioner with more powers than those envisaged in the Act. They were given the right to veto terms of a contract concluded by the municipality, while the role of the Regional Commissioner was merely investigative, facilitative and mediatory, not adjudicative. The orders were therefore impermissible. Furthermore, the court found the orders were void for vagueness and were accordingly not capable of implementation or enforcement.

The SCA largely agreed with the LCC’s reasoning in granting the section 34(5)(b) order. However, it amended the order to reflect the correct land portion it applied to; as the order was applicable to all future and present claimants, the claimants specified in the LCC order were removed; and the conditions the LCC attached to the granting of the order were also removed.

A further substantive issue before the court related to an application by the municipality for the review and setting aside of the Regional Commissioner’s publication of land claims lodged with her by one of the respondents. The court found however that it was unnecessary and undesirable to make any order in respect of that application.

The appeals were upheld with costs to be paid by the Regional Commissioner and the cross-appeals were dismissed.

**--- Ends ---**