

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

Rand Water Board v Big Cedar Trading 22 (Pty) Ltd

The SCA today upheld an appeal by the Rand Water Board against a judgment of the Gauteng Division, Pretoria of the High Court in which it had ordered Rand Water to register a servitude over land owned by Big Cedar and pay compensation to Big Cedar in an amount of nearly R33 million.

The claim arose from the laying of two pipelines, the one in 1971 and 1972 and the other in 1997 over agricultural land in the vicinity of Tshwane. The pipelines carried the water supply to large populated areas adjacent to Tshwane. At the time the pipelines were laid various members of one family owned the land. They sold the land to Big Cedar in 1993. Before that negotiations had been held with the family to register a servitude over the property in respect of the pipelines but these had not borne fruit before the sale. After the sale Rand Water entered into negotiations with Big Cedar to register a servitude but these broke down over the issue of compensation.

Big Cedar sued for the removal of the pipelines, or alternatively the registration of a servitude and the payment of compensation, which it fixed at R6.6 Million. The primary issue between the parties was whether

the laying of the pipelines had been lawful at the time that this occurred. Rand Water relied on the provisions of s 24(j) of the Rand Water Board Statutes (Private) Act 1950, which authorised it to enter upon privately owned land for the purpose of laying pipelines. Big Cedar recognised that there was such a power, but argued that it had not been validly exercised because there was no proof that a notice required by the section had been given to the owners before they entered upon the property to lay the pipelines.

The SCA rejected this argument on two grounds. First the pleadings had not raised the issue of the validity of the exercise of the power and it was unfair to Rand Water to permit Big Cedar to rely on a point neither raised nor canvassed at the trial. Second and in any event it held that non-compliance would not render the exercise of the power invalid because on a proper interpretation of the section that was not its purpose. The laying of the pipelines was accordingly lawful and the statute did not require the registration of a servitude in order to preserve its validity. Nor did it provide for the payment of compensation but even if it had that compensation would have been payable to the family who owned the property at the time the pipelines were laid. If Big Cedar had a claim it was against the sellers who had not disclosed the existence of the pipeline at the time of the sale.

The SCA also pointed out that there was no evidence to support the assessment of compensation by the high court. The appeal was upheld with costs and the order of the high court altered to one dismissing Big Cedar's claim with costs.