



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: 1 December 2016

Status: Immediate

MTN v BEEKMANS NO (1139/2015) [2016] ZASCA 188 (1 December 2016)

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

1. In order to improve its cellular network coverage in the residential area of Constantia, Cape Town, the appellant, Mobile Telephone Networks (Pty) Ltd (MTN), decided to erect a cellular communications base station and mast (the base station) on erf 10762, Dalham Road, Constantia. The first, second and third respondents, the trustees of the Stemar Trust (the Trust), are the owners of an adjoining erf. In terms of the relevant zoning scheme, erf 10762 could only be used for residential purposes. Despite having received objections thereto, the fourth respondent, the City of Cape Town (the City), granted an application by MTN for approval of departure from the zoning of the erf for a period of five years. This period commenced on 5 March 2013.

2. MTN consequently submitted building plans for the base station to the City. The building plans were submitted in terms of s 4 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act). After a public participation process was followed, 21 property owners in the area, including the Trust, objected to the building plans, mainly on the basis that their adjoining and neighbouring properties' values would be negatively affected. However, as a result of advice by the City, MTN withdrew the application for approval of the building plans in terms of the Act and resubmitted the same building plans for approval of the base station as a temporary building in terms of the

National Building Regulations (the regulations). The City approved the building plans of the base station on the basis that it would be a temporary building. The Trust applied for the review and setting aside of the decision of the City to approve the building plans. The Western Cape Division of the High Court, Cape Town granted the relief claimed by the Trust and MTN lodged an appeal against that order to the Supreme Court of Appeal (SCA).

3. Today the SCA dismissed MTN's appeal. The SCA embarked upon an interpretation of the Act and the regulations and came to the conclusion that an objective assessment of the nature and purpose of a building must determine whether it is temporary or not. It held on the facts that in terms of its nature and characteristics, the base station had all the hallmarks of a permanent building and that its purpose was to serve the telecommunication needs of the community for an indefinite period. The SCA thus concluded that the building plans of the base station were wrongly approved on the basis that it constituted a temporary building.

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