



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 28 November 2018
STATUS Immediate

***Tembu Convenience Centre CC & another v City of Johannesburg &
others (270/2018) [2018] ZASCA 160 (28 November 2018)***

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.

The Supreme Court of Appeal (the SCA) today dismissed an appeal against a judgment of the Gauteng Local Division, Johannesburg, of the High Court in terms whereof that court dismissed an action by the appellants for damages in terms of s 67(4) of the Local Government Ordinance 17 of 1939 (Gauteng).

The first appellant conducted a service station business on the north-west corner of the intersection between Mooki Street and the Soweto Highway. During 2008-2009 the first respondent, the City of Johannesburg, caused dedicated bus lanes to be created in Mooki Street for use by its Re Vaya buses. The same number of lanes continued to exist as before. However in each direction one lane (the inner lane) was reserved for the exclusive use of buses. Rumbling blocks or crash barriers separated outer mixed-traffic lanes from the inner bus lanes, and a constructed median island separated the opposing bus lanes from each other. These works had the effect that mixed

traffic travelling on Mooki Street in a westerly direction could not make a right turn across oncoming traffic in order to reach the service station. Similarly, traffic entering Mooki Street from side roads to the south could not travel across Mooki Street and turn right towards the service station. If such vehicles wished to reach the service station, they would need to travel about 500 m further west and use a traffic circle to turn back onto Mooki Street in an easterly direction.

The question was whether these works resulted in a partial closure of Mooki Street within the meaning of s 67 of the Ordinance. Only if this were the case would the first appellant have been entitled to claim damages. The court a quo answered the question in the negative and the SCA agreed. The SCA held that a street can only be said to be partially closed if a part of the street permanently ceases to be available for use by all traffic. In the present case, the dedicated bus lanes were not closed to all traffic, remaining open for use by Rea Vaya buses. The fact that mixed traffic travelling in a westerly direction could not enter the inner westerly bus lane, and thus could not cross over to the other side of Mooki Street, did not mean that any part of the street had been closed to all traffic. The dedication of the bus lane, whether achieved through traffic signs, painted lines or physical barriers, was a matter of traffic flow and did not involve a street closure.

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