



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**Dennegeur Estate v Telkom ZASCA 37 (29 March 2019)**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 29 March 2019

**Status:** Immediate

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

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Dennegeur, a private Residential Estate situated in Somerset West was established in approximately 2000. At the time Telkom undertook to provide telephone and ADSL internet services to the estate. The developer constructed underground infrastructure in the form of ducts, sleeves and manholes in order to give effect to this undertaking. Telkom thereafter installed its network into the infrastructure by placing copper cables in the ducts and sleeves across Dennegeur.

During 2016 Vodacom, acting at the behest and on request of the Home Owners Association of Dennegeur, the owner of the property, installed its optic fibre cables into the same ducts and sleeves which housed Telkom's copper cables. Telkom claimed that it was, prior to the installation of the optic fibre cables, in free and undisturbed possession, alternatively that it enjoyed quasi-possession of the infrastructure and that Vodacom had committed an act of spoliation by placing its

optic fibre into the ducts and sleeves. It therefore claimed the return of its undisturbed possession of the infrastructure in terms of the 'mandament van spolie'.

Telkom's claim was upheld in the High Court, Cape Town, which ordered the Home Owners Association of Dennegeur and Vodacom to restore the undisturbed possession of the underground ducts, sleeves, manholes and copper cables to Telkom. The High Court refused an application for leave to appeal, however, the Home Owners Association and Vodacom appealed to the Supreme Court of Appeal, with special leave obtained from that court.

The Supreme Court of Appeal held that Telkom did not enjoy possession of the infrastructure or cables which formed part of Dennegeur and was owned, occupied and controlled by the Home Owners Association. Its rights are derived from the provisions of Section 22 of the Electronic Communications Act (the ECA). The rights conferred by s 22 of the ECA are in their nature servitural. Servitural rights are incorporeal assets and not capable of physical possession. A party professing to be entitled to a servitural right does, however, enjoy the legal protection against spoliation to the extent that it in fact exercised the professed rights prior to the alleged act of spoliation. Telkom exercised its rights to the extent that it laid down copper cables in the ducts, sleeves and manholes. Vodacom's optic fibre network did however, not disturb Telkom's use of the ducts and did not prevent Telkom's operation of its network. It was accordingly held that Telkom did not possess the vacant space in the ducts and sleeves which was subsequently occupied by Vodacom and that Vodacom's conduct was therefore not an act of spoliation. The Supreme Court of Appeal accordingly upheld the appeal.