



CONSTITUTIONAL COURT OF SOUTH AFRICA
South African Riding for the Disabled Association v Regional Land Claims
Commissioner and Others

CCT 172/16

Date of judgment: 23 February 2016

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 23 February 2017, the Constitutional Court handed down a judgment in an application for leave to appeal against an order of the Land Claims Court which dismissed with costs a request to intervene in proceedings before that Court.

The applicant is the South African Riding for the Disabled Association (Association). The Association has cited as respondents the Regional Land Claims Commissioner (Commissioner), Mr Sedick Sadien and Mr Ebrahim Sadien (Sadiens). The Association has occupied Erf 142 Constantia, Cape Town under a lease for 34 years from the State. The Land Claims Court's varied order directed that the property be transferred to the Sadiens as compensation for the land they had lost. The Sadiens had claimed restoration of land they had lost as a result of discriminatory practices of the previous apartheid order.

That Court had ordered the transfer of Erf 1783 Constantia to Mr Sedick Sadien. But this erf proved to be considerably smaller than the dispossessed land. As a result the Land Claims Court awarded the Sadiens a different parcel of land, Erf 142 Constantia, to compensate for the shortfall. On 8 February 2013, the Land Claims Court varied its order to replace the smaller land with Erf 142 Constantia.

This variation was effected without the knowledge of the Association which had allegedly made improvements valued at R7.5 million on the property in question during its tenancy. No offer was made by any party to compensate the Association and the Land Claims Court ordered none. Aggrieved by the turn of events, the Association instituted in the Land Claims Court an application for leave to intervene. The Association also

applied for rescission of the order in terms of section 35(11) of the Restitution of Land Rights Act 22 of 1994 (Act). It sought to have the varied order set aside, including the order of 7 December 2012 in terms of which the smaller land was awarded to the Sadiens.

The Land Claims Court held that the Association had no direct and substantial interest in the remedy sought by the Sadiens. The Land Claims Court concluded that on the facts the Association had no interest in the subject-matter of the case which was the restoration of land to the Sadiens. The Association applied for leave to appeal which was refused by the Land Claims Court. Its petition to the Supreme Court of Appeal was also not successful.

The Association applied for leave to appeal to this Court. This Court had to decide whether a lawful occupier of State land has a right to be heard when the land it occupies is earmarked for restoration to a land claimant in terms of the Act. In its written submissions before this Court the Commissioner contended that the Association was not an interested person envisaged in section 29(1) of the Act because it merely had a financial interest in the litigation concerning restoration of land to the Sadiens.

The Constitutional Court decided this matter without oral hearing. In a unanimous judgment written by Jafta J (Nkabinde ACJ, Cameron J, Froneman J, Khampepe J, Madlanga J, Mbha AJ, Mhlantla J, Musi AJ and Zondo J concurring), the Court disagreed with the submissions of the Commissioner. The Court held that section 35(9) of the Act confers an entitlement upon lawful occupiers to have just and equitable compensation determined if transfer of the land they occupy is ordered. It was the determination of the right to compensation that gave rise to a direct and substantial interest. The Court held that the section safeguarded the occupier's interests by conferring on it an entitlement to just and equitable compensation and that in those circumstances entitlement to compensation was the pre-condition for authorising transfer. In the absence of an agreement, the lawful occupier was entitled to be heard on what would constitute just and equitable compensation.

The Court held that without determination of the Association's compensation, it could not be said that the Court's variation order was consonant with section 35(9) of the Act. The Association was therefore entitled to intervene and enforce its right to compensation. The Court further held that the Land Claims Court erred in dismissing the application to intervene and that it should have granted it for purposes of considering the issue of compensation only. The Court granted leave to appeal and upheld the appeal and the matter was remitted to the Land Claims Court for determination of compensation payable to the Association. The Commissioner was ordered to pay costs in the Land Claims Court and this Court.