



CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT 102/11 & CCT 103/11  
[2012] ZACC 10

In the matter of:

MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL  
AFFAIRS AND DEVELOPMENT PLANNING,  
WESTERN CAPE PROVINCE

Applicant

In Re:

Case CCT 102/11  
[2012] ZACC 8

MINISTER FOR MINERAL RESOURCES

Applicant

and

SWARTLAND MUNICIPALITY

First Respondent

HUGO WIEHAHN LOUW N.O.

Second Respondent

CORNELIA JOHANNA ELIZABETH LOUW N.O.

Third Respondent

IGNATIUS VILJOEN N.O.

Fourth Respondent

IZAK BARTHOLOMEAS VAN DER VYFER N.O.

Fifth Respondent

ELSANA QUARRY (PTY) LTD

Sixth Respondent

MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL  
AFFAIRS AND DEVELOPMENT PLANNING,  
WESTERN CAPE PROVINCE

Seventh Respondent

and in the matter between

MACCSAND (PTY) LTD

Applicant

and

CITY OF CAPE TOWN

First Respondent

MINISTER FOR WATER AFFAIRS  
AND ENVIRONMENT

Second Respondent

MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL  
AFFAIRS AND DEVELOPMENT  
PLANNING, WESTERN CAPE PROVINCE

Third Respondent

MINISTER FOR RURAL DEVELOPMENT  
AND LAND REFORM

Fourth Respondent

MINISTER FOR MINERAL RESOURCES

Fifth Respondent

and

CHAMBER OF MINES OF SOUTH AFRICA

First Amicus Curiae

AGRI SOUTH AFRICA

Second Amicus Curiae

Decided on : 29 May 2012

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JUDGMENT

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Before: Mogoeng CJ, Yacoob ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Maya AJ, Nkabinde J, Skweyiya J, van der Westhuizen J and Zondo AJ:

THE COURT:

[1] On 12 April 2012 this Court delivered two judgments in case numbers CCT 102/11 and CCT 103/11 in which the present applicant, the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province (MEC) was a respondent. In case CCT 102/11, the Court issued a costs order in these terms:

“The Minister for Mineral Resources must pay the costs of Swartland Municipality and the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape, including costs of two counsel.”<sup>1</sup>

And in case CCT 103/11, the Court issued an order of costs in the following terms:

“The Minister for Mineral Resources must pay the costs of the City of Cape Town in this Court, including costs occasioned by the employment of two counsel.”<sup>2</sup>

[2] On 16 April 2012 the MEC launched the present application in terms of Rule 29 of the Rules of this Court<sup>3</sup> read with Rule 42 of the Uniform Rules.<sup>4</sup> Rule 42

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<sup>1</sup> *Minister for Mineral Resources v Swartland Municipality and Others* [2012] ZACC 8 at para 14.

<sup>2</sup> *Maccsand (Pty) Ltd v City of Cape Town and Others* [2012] ZACC 7 at para 59.

<sup>3</sup> Rule 29 stipulates that Rule 42 of the Uniform Rules applies to proceedings in this Court.

<sup>4</sup> Rule 42 provides:

- “(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
  - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
  - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

authorises this Court to vary “an order or judgment in which there is an ambiguity, or a patent error or omission”. The MEC asserts that both orders must be varied because they contain patent errors.

[3] With regard to case CCT 102/11, the deponent to the affidavit filed on behalf of the MEC states that the error lies in the fact that the MEC did not oppose that appeal in this Court, even though he was cited as a respondent and both written and oral argument was presented in this Court on his behalf. The affidavit continues to say that argument presented was confined to case CCT 103/11, which was heard together with case CCT 102/11. Even though the application was served on the other parties, these facts remain undisputed.

[4] In relation to case CCT 103/11, the MEC contends that not only was the City of Cape Town successful in opposing the appeal, but he too was successful. Accordingly, it was argued that the costs order granted in favour of the City should have included him. Based on this assumption, it was submitted that the MEC’s exclusion was occasioned by a patent omission.

[5] As is evident from the text of Rule 42(1)(b), the exercise of the power is limited to the extent of the error or omission. The limit placed on the exercise of the power recognises the principle that once a court has pronounced a final judgment or order, it

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(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.”

has no authority to correct, alter or supplement it.<sup>5</sup> Therefore the variation or amendment of an order constitutes an exception to this principle.

[6] As it transpires that the MEC did not oppose the appeal in case CCT 102/11, I am satisfied that the costs order issued there was granted in error. The order falls to be amended to exclude reference to the MEC.

[7] Regarding case CCT 103/11, the MEC was not left out erroneously as a party to whom costs were also to be paid by the Minister for Mineral Resources. While it is true that the MEC opposed this appeal successfully, his success was partial. It was limited to what is described in the main judgment as the “LUPO issue”, which dealt with the applicability of the Land Use Planning Ordinance<sup>6</sup> to land in respect of which a mining right or permit had been granted under the Mineral and Petroleum Resources Development Act.<sup>7</sup>

[8] However, the MEC did not confine himself to the LUPO issue. He sought to cross-appeal against the refusal of the Supreme Court of Appeal to grant a declaration based on the National Environmental Management Act.<sup>8</sup> In addition he sought, in the alternative, leave to approach this Court directly for the relief that he failed to obtain

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<sup>5</sup> *Firestone South Africa (Pty) Ltd v Genticuro A.G.* 1977 (4) SA 298 (AD) at 306F-G. This case was approved by this Court in *Minister of Justice v Ntuli* [1997] ZACC 71; 1997 (3) SA 772 (CC); 1997 (6) BCLR 677 (CC) at paras 22-3 and *Ex parte Women’s Legal Centre: In re Moise v Greater Germiston Transitional Local Council* [2001] ZACC 2; 2001 (4) SA 1288 (CC); 2001 (8) BCLR 765 (CC) at paras 8-9.

<sup>6</sup> Ordinance 15 of 1985.

<sup>7</sup> Act 28 of 2002.

<sup>8</sup> Act 107 of 1998.

from the Supreme Court of Appeal. Both these applications were unsuccessful. Instead the Minister for Mineral Resources had opposed them successfully.

[9] In the circumstances, this Court considered it fair, as between the MEC and the Minister for Mineral Resources, that each party should carry its own costs. Accordingly, the costs order made in case CCT 103/11 is accurate. It follows that while the request must succeed in respect of case CCT 102/11, it must fail in relation to case CCT 103/11.

[10] The following order is made:

1. The order of costs granted in case CCT 102/11 is amended by deleting the reference to the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape.
2. The request for the variation of the order of costs in case CCT 103/11 is refused.
3. There is no order as to costs in this application.

For the Applicants:

Werksmans Attorneys.