



CONSTITUTIONAL COURT OF SOUTH AFRICA

Camps Bay Ratepayers' & Residents' Association and Another v Harrison and Another

**CCT 18/10
[2010] ZACC 19**

Handed Down: 4 November 2010

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 4 November 2010, the Constitutional Court gave judgment in this application for leave to appeal against the judgment of the Supreme Court of Appeal. It has its origin in a decision by the City of Cape Town ("the City") to approve a set of plans for the building of a house in Camps Bay on the property of the first respondent, Ms Harrison. The second applicant owns property in Camps Bay which is situated diagonally behind the property of Ms Harrison.

Ms Harrison acquired her property towards the end of 2004. At that time the only building on the property was a modestly-styled single storey cottage, which provided an uninterrupted view of the sea from the second applicant's property. However, Ms Harrison then applied to the City for the approval of a set of plans contemplating the construction of a three storey house on her property which would interfere with the sea view from the second applicant's property. These plans were approved by the City in February 2005. Subsequently, the applicants became aware of the plans and objected. As a result, Ms Harrison submitted a revised plan that was again approved, but set aside on appeal. In response Ms Harrison filed a further set of revised plans. These were again approved by the City in September 2007. This time the applicants brought a review application in the Western Cape High Court, Cape Town, to set the plans aside. The application was unsuccessful, as was the appeal against that judgment to the Supreme Court of Appeal.

In the application for leave to appeal to the Constitutional Court, the applicants contended that the Supreme Court of Appeal had erred on the following three grounds: (a) it had followed the incorrect precedent with regard to the interpretation of the relevant section of the National Building Regulations and Building Standards Act, 1977 ("the Building Act"); (b) it had decided that one of the grounds of review on which the applicants sought to rely had been raised more than 180 days after the

decision at which it was aimed and thus fell foul of the provisions the Promotion of Administrative Justice Act, 2000 (“PAJA”); and (c) it had endorsed a decision by the City when it was alleged that the impugned plans did not contravene building restrictions that were registered against the title deed of Ms Harrison’s property.

In a unanimous judgment, the Constitutional Court dismissed the application for leave to appeal with costs. With regard to the first ground, the Court concluded that it did not arise and thus that it would not be in the interests of justice for the Court to determine the difference in the two precedents. As to the second ground, the Court held that the SCA could not be faulted, either in its interpretation of PAJA or in its application of PAJA to the facts of this case. As to the third ground, the Court agreed with the findings of the SCA that the plans did not contravene any title deed restrictions.

Consequently the Constitutional Court held that the application for leave should be refused because there was little prospect that the appeal would change the outcome of the original decision.