



CONSTITUTIONAL COURT OF SOUTH AFRICA

Grace Masele (Mpane) Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another

CCT 265/17

**Date of hearing: 24 May 2018
Date of judgment: 25 October 2018**

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 25 October 2018 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against the decision of the High Court of South Africa, North West Division, Mahikeng (High Court). The High Court granted an order evicting the first to 37th applicants, representatives of 13 families in the Lesetlheng Community (the 38th applicant), from the farm Wilgespruit 2 J.Q, North West Province (the farm). It also granted an interdict against the applicants preventing them from entering, remaining or conducting farming operations on the farm.

On 12 April 2003, the Traditional Council of the Bakgatla-Ba-Kgafela Community (Bakgatla Community) registered Itereleng Bakgatla Mineral Resources (Pty) Ltd (IBMR), the first respondent in this matter, for the purpose of obtaining a prospecting permit. In 2004 IBMR was awarded a prospecting permit under the Mineral and Petroleum Resources Development Act (MPRDA) and on 19 May 2008 it was granted a mining right in respect of the farm. On 21 April 2007 before the mining right was granted, a meeting regarding the proposed mining was convened with members of the Lesetlheng Community, a constituent part of the Bakgatla Community. At a separate meeting on 28 June 2008, a resolution was passed in terms of which the Lesetlheng Community agreed to enter into a surface lease agreement with IBMR, the Bakgatla Community, and the Minister of Rural Development and Land Reform, in terms of which the Bakgatla Community would lease the farm to IBMR for mining purposes.

In 2014 intensive preparations got underway with a view to commencing mining operations on the farm. This disturbed the applicants' possession of the farm, so the applicants

successfully applied for a spoliation order against the respondents to stop these operations. The respondents in turn applied to the High Court and were granted an order evicting the applicants from the farm and preventing the applicants from returning to the farm or interfering with the respondents' mining operations. This decision was the subject of the applicants' appeal.

The applicants sought leave to appeal against the decision of the High Court on, amongst others, the following three grounds. They argued that: (a) they are the true owners of the farm; (b) they were not properly consulted before the mining right was granted, the surface lease agreement was signed and / or mining commenced; and (c) the respondents were not entitled to an interdict because they did not exhaust the internal processes provided for in section 54 of the MPRDA.

In a unanimous judgment written by Petse AJ, the Constitutional Court held that it is settled law that all other satisfactory remedies must be exhausted before an interdict can be applied for. Section 54 of the MPRDA provides for a speedy mechanism to resolve disputes between landowners or lawful occupiers and mining right holders when the former prevents the latter from commencing with mining. Section 54 plays an important role in balancing the interests of landowners and / or lawful occupiers against the interests of mining right holders and the language of section 54 is mandatory. When it is available to holders of mining rights, section 54 should therefore be exhausted before holders of mining rights apply for an interdict.

In this case, the applicants did not unreasonably refuse to participate in the section 54 process because the respondents did not properly attempt to exhaust that process. Furthermore, the respondents were under a duty to exhaust the section 54 process because the applicants were lawful occupiers of the farm. The applicants' lawful occupation rested on their informal land rights as protected by the Interim Protection of Informal Land Rights Act. This right still existed notwithstanding the award of the mining right to the respondents. The right was also not consensually terminated by the resolution regarding the surface lease agreement taken at the *kgotha kgothe* (an open community meeting that all adult community members are eligible to attend) of 28 June 2008. This was because there was insufficient evidence to demonstrate that the applicants had had a reasonable opportunity to participate in the business of the *kgotha kgothe* that culminated in the adoption of the resolution in question.

For these reasons, the Constitutional Court granted leave to appeal and upheld the appeal. The High Court's order was set aside, and was substituted with an order dismissing the respondents' application for an eviction and interdict with costs.