

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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HAAKDOORBULT BOERDERY CC v MPHELA

This appeal concerns the restitution of land lost by the claimants due to racially discriminatory laws and practices. The Land Claims Court (the LCC) upheld the claim and found that the claimants were entitled to restoration of the whole of the farm Haakdoringbult.

Mr Klaas Phali Mphela, the scion of the Mphela family and whose descendants are the claimants, was a pioneering farmer who was able to purchase a substantial farm on the banks of the Crocodile River between Brits and Thabazimbi during 1913 from a white farmer, and to obtain full title. The date is significant because later during that year the Black Land Act (then called the Natives Land Act) 27 of 1913 was promulgated which would have prevented him from buying land within an area designated for white ownership. He was a member of a small class of enterprising blacks who, in the face of all odds, was able to buy and pay for a farm of this size; to systematically cultivate and irrigate it; to produce crops not only for own

consumption but also for the market; to provide accommodation for his increasing family; and even to let a portion of the farm to whites.

The farm was sold under government pressure to white farmers during 1951. The government insisted that the family should relocate to a nearby farm, Pylkop. The family resisted the move until 1962, when they were removed to Pylkop, which the family had bought with the money received for Haakdoornbult. The removal was nevertheless traumatic and was only consented to after a night raid, arrest of the adults for trespassing and the bulldozing of their homes and kraals and kgotla tree.

The main issue in the appeal related to the extent of restitution to which the family is entitled. The LCC held that it was entitled to the restoration of the whole farm. In this judgment the Court concluded that this amounts to an over-compensation bearing in mind the fact that the family had sold Haakdoornbult and had bought Pylkop at market-related prices.

However, this Court held that the family was entitled to be restored to 86 per cent of the original farm. Whether the family has to make a contribution towards the cost of the farm could not be decided on the material available and this issue was referred back to the LCC for determination.

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