



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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STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Mobile Telephone Networks (Pty) Ltd & another v Spilhaus Property Holdings (Pty) Ltd & others (208/2017) [2018] ZASCA # (# March 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Western Cape Division, Cape Town (high court). The issue on appeal was whether owners in a sectional title scheme had the requisite *locus standi* to seek interdictory relief. The high court answered that question in favour of the owners.

Prior to the coming into existence of the sectional title scheme and by agreement between the two appellants, MTN and Alphen, an antenna had been erected on the rooftop of a building in the scheme. It would seem that the antenna had been erected unlawfully. Some of the sectional owners (the present respondents) applied to the high court for an order directing MTN to remove the antenna and Alphen to co-operate to the extent necessary in the removal of the installation. That application succeeded before the high court.

Before the SCA the appellants argued that as the structure was on common property in the sectional title scheme, the respondents did not have the requisite *locus standi* to approach the high court for relief. Interpreting the relevant provisions of the Sectional Titles Act No 95 of 1986 (the Act), the SCA held that it was for the body corporate to institute proceedings in relation to the issues raised by the litigation. The SCA reasoned that such a conclusion accords with the general principle at common law that where a wrong is done to it, only the company (in this case the body corporate), and not the individual members, may take proceedings against the wrongdoers. The SCA thus concluded that s 41 of the Act, which

provides a comprehensive statutory right to an owner of a sectional title unit aggrieved at the failure of the body corporate to act in respect of a matter mentioned in s 36(6), was applicable. The SCA accordingly held that the relief available to an owner in the position of the respondents is to approach the court for the appointment of a *curator ad litem*. The curator would investigate the events complained of and, if so advised, take action aimed at remedying the position.