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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 April 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

George Local Municipality v Cape Estate Properties Pty) Ltd and Others (880/2023) ZASCA 39 (8 April 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed the appeal with costs, including the costs of two counsel where so employed.

This appeal is concerned with the zoning of Erf 2[...], George (Erf 2[...]), which is owned by the first respondent, Cape Estates Properties (Pty) Ltd (Cape Estates) and a decision by the appellant, the George Local Municipality (the Municipality), to refuse an application (the rectification application) by Cape Estates for rectification of the zoning of Erf 2[...] depicted in the Municipality's 2017 Zoning Scheme Map (the 2017 zoning map).

The 2017 zoning map depicted Erf 2[...] as having a split zoning: 4,1 hectares of the property was zoned 'Industrial Zone II' (industrial), with the remaining approximately 7 hectares zoned 'Agricultural Zone 1' (agricultural). Cape Estates took the view that the split zoning of Erf 2[...] in the 2017 zoning map was erroneous. It contended that the entire 11,1875 hectares of Erf 2[...] should have been depicted with an industrial zoning. Cape Estates brought a rectification application, which was aimed at correcting this averred error. After both the rectification application, as well as a subsequent internal appeal to the Municipality's Appeal Authority (the appeal authority) failed, Cape Estates instituted review proceedings in the Western Cape Division of the High Court, Cape Town (the high court), however the review application was dismissed. The review succeeded on appeal to a full court of the high court (the full court). The appeal against the full court's decision came before this Court by way of special leave.

In 2001 the Municipality made a split zoning (industrial and agricultural) determination for Kraaibosch 195/1, Division George (Kraaibosch 195/1) in terms of Section 14(1) of [LUPO]. The determination was conditional, one of the conditions being the submission of site plan showing the location of a saw mill with all structures and the surrounding plantations with access and other routes (condition 2). The saw mill was situated on that portion of Kraaibosch 195/1 (the sawmill portion) that was subsequently subdivided from the larger property. After the subdivision, the sawmill portion became Portion A, and later still, Erf 2[...].

Although there was never direct compliance with condition 2, in 2001, the owner applied for the subdivision on the basis that what became Portion A (later Erf 2[...]) was zoned industrial, with the remainder of Kraaibosch 195/1 zoned agricultural. A subdivision map was attached to the application showing the sawmill on Portion A, with the latter being 17,4 hectares in extent. The subdivision was approved and effected in 2002.

In 2017, the Municipality compiled a new zoning map. It identified Erf 2[...] as having a split industrial/agricultural zoning. The Municipality took the view that as there had been no compliance with condition 2 of the 2001 zoning determination, that determination was 'inchoate'. Further, that it was open to the Municipality, in the 2017 zoning exercise to complete the exercise commenced in 2001 and to determine the extent of the industrial zoning. It had done so by looking at additional information and had reduced the industrial zoning to 4,1 hectares. On its calculation, this was the extent of the footprint of the actual sawmill on Erf 2[...].

The SCA, per Keightley JA, held that the difficulty with the Municipality's primary premise was that it was contrary to the clear terms of the conditions attached to the 2001 zoning determination. Condition 1 expressly stated that the approval would lapse if not complied with. It could not be contended that condition 2 could have remained unsatisfied for a period of 16 years without lapsing. Accordingly, the Municipality had proceeded on the incorrect legal premise that it had the power to finalise what it incorrectly assumed to be an incomplete zoning exercise. As a result, the Municipality had engaged in an impermissible, unlawful re-zoning exercise in 2017.

On the question of whether condition 2 had been complied with the SCA agreed with Cape Estates that there had been substantial compliance. The conditions did not require absolute compliance. The subdivision plan submitted by the owner's land surveyors in 2001, which was aimed specifically at subdividing the sawmill portion from the remainder of Kraaibosch 195/1, achieved the purpose of condition 2 by providing all the information necessary to make a precise determination of the extent of the industrial use associated with the sawmill. For these reasons, the full court was correct in granting an order reviewing and setting aside the appeal authority's decision to dismiss Cape Estate's internal appeal

When considering the order substituting the decision of the appeal authority with one upholding the internal appeal, the SCA reasoned that a remittal back to the appeal authority would serve no purpose: it would have been bound to implement the court's decision and the outcome of any remittal would have been a foregone conclusion. Thus, exceptional circumstances existed

warranting the full court's order of substitution. Therefore, the SCA found that the appeal must fail in this respect as well.

In addition, the SCA dismissed an appeal against the order declaring that the industrial zoning of Erf 2[...] was 'without restrictions as to the use of the property to sawmill purposes only'.

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