CONSTITUTIONAL COURT OF SOUTH AFRICA

Pieterse N.O. v Lephalale Local Municipality

CCT 184/16

Date of judgment: 10 November 2016

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.

Today the Constitutional Court handed down a judgment confirming the order of the High Court of South Africa, Gauteng Division, Pretoria (High Court) declaring section 139 of the Town-planning and Townships Ordinance 15 of 1986 (Ordinance) inconsistent with the Constitution and invalid.

The applicants in the High Court, Mr Hendrik Diederick Pieterse and Ms Elizabeth Barindina Pieterse, are trustees of the Waterkloof Family Trust (Trust), which owns farmland in the area of the first respondent, the Lephalale Local Municipality, in Limpopo. The Trust obtained municipal permission to temporarily use a portion of the farm for a contractors' residential camp (first application). But when it lodged a second application for the use of an additional portion, the Municipality declined. Aggrieved, the Trust applied to the High Court to review the Municipality's refusal. The Trust was then informed of the appellate process that was available to a provincial body in terms of section 139 of the Ordinance.

The Trust regarded this appeal as an unnecessary hurdle. So in its application to the High Court to review the Municipality's refusal it also sought an order declaring section 139 invalid to the extent that its provisions constituted interference by the provincial government in municipal planning decisions.

The High Court declared section 139 of the Ordinance constitutionally invalid because it allows for provincial interference in a municipality's exclusive, constitutionally enshrined domain by giving appellate powers over its planning competences to the provincial government. In doing so, the High Court applied several Constitutional Court decisions

establishing the principle that an appeal to a provincial body against a local municipal planning decision offends the Constitution. Several decisions of the Court have previously struck down provincial appeal mechanisms of this sort.

After handing down its judgment on 25 May 2016, the High Court, in accordance with section 172(2)(a) of the Constitution, directed its Registrar to lodge the judgment with this Court for confirmation of the declaration.

None of the parties applied for the confirmation of the order of invalidity nor did any apply for leave to appeal against it. The Constitutional Court decided the confirmation without written or oral submissions.

A judgment, in the name of the Court, agreed with the High Court: section 139 of the Ordinance is inconsistent with the Constitution and invalid. The Court thus confirmed the High Court order. The Court found that section 139 allows for a parallel or concurrent authority at provincial level to countermand the Municipality in an area of competence assigned exclusively to the Municipality. So it fails to observe municipal autonomy. And it constitutes constitutionally impermissible provincial interference.

The Court also held that it was not in the interests of justice to suspend the order of invalidity. It therefore takes effect immediately.

The Court added that, to avoid disruption and prejudice to third parties, whose appeals had already been disposed of by the Limpopo Townships Board, as well as those whose appeals are still pending; the declaration of invalidity does not operate retrospectively.

This means it will not affect finalised appeals. And appeals currently pending in terms of the provision that has been struck down continue until finalised. However, the Limpopo Townships Board is required, when it considers these pending appeals, to take into account the Municipality's norms and standards, and policies.