



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mighty Solutions CC t/a Orlando Service Station v Engen Petroleum Ltd and Another

CCT 211/14

Date of hearing: 11 August 2015

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 Tuesday 11 August 2015 at 10h00 the Constitutional Court will hear an application for leave to appeal against a judgment of the South Gauteng High Court. The High Court granted an eviction order in favour of Engen Petroleum Ltd against Mighty Solutions CC trading as Orlando Service Station in respect of service station premises situated in Orlando East, Soweto.

The applicant, Mighty Solutions, is a licenced petroleum retailer under the Petroleum Products Act (the Act). The respondent, Engen, is a wholesaler and distributor of petroleum products to a nationwide network of independently operated and owned “Engen” branded service stations. In September 2005, Engen leased the service station to Mighty Solutions in terms of an operating lease for a period of three years. At the expiry of the lease it was renewed from month to month until it was eventually cancelled. The parties agree that the lease has terminated.

In 2013, Engen applied for an eviction order against Mighty Solutions, which had continued to operate a petroleum retail business from the premises under Engen’s name. The High Court granted an eviction order in favour of Engen. The Supreme Court of Appeal refused leave to appeal.

In this Court, Mighty Solutions contends that, because an earlier lease between Engen and the owner of the service station site had terminated before the commencement of the eviction proceedings, Engen had no legal standing to claim its eviction from the site. Mighty Solutions argued in the High Court that a licenced retailer acquires possessory rights over the relevant property and that this right can defeat any common-law claim Engen might have had to support an eviction order. Mighty Solutions further contends that upon the cancellation of the lease,

Engen was unjustifiably enriched at Mighty Solutions' expense, giving rise to an enrichment claim and a right on its part to retain possession of the site until compensated for that enrichment.

Engen contends that a lessor or sub-lessor has a common law right to evict a lessee or sub-lessee upon the valid termination of the lease, and the lessee or sub-lessee may not resist eviction proceedings by challenging the lessor's right to occupy the property. It argues that a lessee or a sub-lessee may only challenge the lessor's right to occupy the property if the lessee or sub-lessee can show that it has acquired a fresh right from the owner of the property to remain in occupation. It also argues that the retail licence held by Mighty Solutions under the Act entitled it to trade from the site, but did not give it any right of occupation. According to Engen, Mighty Solutions' original argument that it acquired possessory rights misconceived the nature of the retail licence. Finally, Engen maintains that Mighty Solution's enrichment claim does not satisfy the requirements for such a claim and that any right of retention, in any event, terminated when Mighty Solutions was ejected from the premises in November 2014.