

SOUTH AFRICA / JUDGMENT

**MEC for Local Government, Environmental Affairs
and Development Planning, Western Cape Province In
re: Minister for Mineral Resources and Swartland
Municipality and Others and Maccsand (Pty) Ltd and
The City of Cape Town and Others (CCT 102/11, 103/11)
[2012] ZACC 10; 2012 (9) BCLR 947 (CC) (29 May 2012)
[2012] ZACC 10**

COURT

Constitutional Court

BEFORE

Mogoeng, Yacoob, Cameron, Froneman, Jafta,
Khampepe, Maya, Nkabinde, Skweyiya, van der
Westhuizen, Zondo

CASE / FILE NUMBER

CCT 102/11, 103/11

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CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT 102/11 & CCT 103/11

[2012] ZACC 10

In the matter of:

MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS AND DEVELOPMENT PLANNING,
WESTERN CAPE PROVINCE

.....Applicant

In Re:

Case CCT 102/11

[2012] ZACC 8

MINISTER FOR MINERAL RESOURCES

.....Applicant

and

SWARTLAND MUNICIPALITY

.....First

Respondent

HUGO WIEHAHN LOUW N.O.

.....Second

Respondent

CORNELIA JOHANNA ELIZABETH LOUW N.O.Third

Respondent

IGNATIUS VILJOEN N.O.

.....Fourth

Respondent
 IZAK BARTHOLOMEAS VAN DER VYFER N.O.Fifth

Respondent
 ELSANA QUARRY (PTY) LTD
Sixth

Respondent
 WESTERN CAPE PROVINCE
Seventh

Respondent
 and in the matter between
 Case CCT 103/11
 [2012] ZACC 7
 MACCSAND (PTY) LTD
Applicant

CITY OF CAPE TOWN
First

Respondent
 MINISTER FOR WATER AFFAIRS
 AND ENVIRONMENT
Second

Respondent
 AFFAIRS AND DEVELOPMENT
 PLANNING, WESTERN CAPE PROVINCEThird

Respondent
 MINISTER FOR RURAL DEVELOPMENT
 AND LAND REFORM
Fourth

Respondent
 MINISTER FOR MINERAL RESOURCES
Fifth

Respondent
 CHAMBER OF MINES OF SOUTH AFRICAFirst

Amicus Curiae
 AGRI SOUTH AFRICA
Second

Amicus Curiae
 Decided on : 29 May 2012

JUDGMENT

Before: Mogoeng CJ, Yacoob ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Maya AJ, Nkabinde J, Skweyiya J, van der Westhuizen J and Zondo AJ:

THE COURT:

On 12 April 2012 this Court delivered two judgments in case numbers CCT 102/11 and CCT 103/11 in which the present applicant, the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province (MEC) was a respondent. In case CCT 102/11, the Court issued a costs order in these terms:

“The Minister for Mineral Resources must pay the costs of Swartland Municipality and the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape, including costs of two counsel.”¹

And in case CCT 103/11, the Court issued an order of costs in the following terms:

“The Minister for Mineral Resources must pay the costs of the City of Cape Town in this Court, including costs occasioned by the employment of two counsel.”²

On 16 April 2012 the MEC launched the present application in terms of Rule 29 of the Rules of this Court³ read with Rule 42 of the Uniform Rules.⁴ Rule 42 authorises this Court to vary “an order or judgment in which there is an ambiguity, or a patent error or omission”.

The MEC asserts that both orders must be varied because they contain patent errors.

With regard to case CCT 102/11, the deponent to the affidavit filed on behalf of the MEC states that the error lies in the fact that the MEC did not oppose that appeal in this Court, even though he was cited as a respondent and both written and oral argument was presented in this Court on his behalf. The affidavit continues to say that argument presented was confined to case CCT 103/11, which was heard together with case CCT 102/11. Even though the application was served on the other parties, these facts remain undisputed.

In relation to case CCT 103/11, the MEC contends that not only was the City of Cape Town successful in opposing the appeal, but he too was successful. Accordingly, it was argued that the costs order granted in favour of the City should have included him. Based on this assumption, it was submitted that the MEC’s exclusion was occasioned by a patent omission.

As is evident from the text of Rule 42(1)(b), the exercise of the power is limited to the extent of the error or omission. The limit placed on the exercise of the power recognises the principle that once a court has pronounced a final judgment or order, it has no authority to correct, alter or supplement it.⁵ Therefore the variation or amendment of an order constitutes an exception to this principle.

As it transpires that the MEC did not oppose the appeal in case CCT 102/11, I am satisfied that the costs order issued there was granted in error. The order falls to be amended to exclude reference to the MEC.

Regarding case CCT 103/11, the MEC was not left out erroneously as a party to whom costs were also to be paid by the Minister for Mineral Resources. While it is true that the MEC opposed this appeal successfully, his success was partial. It was limited to what is described in the main judgment as the “LUPO issue”, which dealt with the applicability of the Land Use Planning Ordinance⁶ to land in respect of which a mining right or permit had been granted under the Mineral and Petroleum Resources Development Act.⁷

However, the MEC did not confine himself to the LUPO issue. He sought to cross-appeal against the refusal of the Supreme Court of Appeal to grant a declaration based on the National Environmental Management Act.⁸ In addition he sought, in the alternative, leave to approach this Court directly for the relief that he failed to obtain from the Supreme Court of Appeal. Both these applications were unsuccessful. Instead the Minister for Mineral Resources had opposed them successfully.

In the circumstances, this Court considered it fair, as between the MEC and the Minister for Mineral Resources, that each party should carry its own costs. Accordingly, the costs order made in case CCT 103/11 is accurate. It follows that while the request must succeed in respect of case CCT 102/11, it must fail in relation to case CCT 103/11.

The following order is made:

The order of costs granted in case CCT 102/11 is amended by deleting the reference to the MEC for Local Government, Environmental Affairs and Development Planning, Western Cape. The request for the variation of the order of costs in case CCT 103/11 is refused. There is no order as to costs in this application.

For the Applicants: Werksmans Attorneys.

¹Minister for Mineral Resources v Swartland Municipality and Others [2012] ZACC 8 at para 14.

²Maccsand (Pty) Ltd v City of Cape Town and Others [2012] ZACC 7 at para 59.

³Rule 29 stipulates that Rule 42 of the Uniform Rules applies to proceedings in this Court.

⁴Rule 42 provides: “(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

- (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.”

4Rule 42 provides:

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- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.
- (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.”

5Firestone South Africa (Pty) Ltd v Genticuro A.G. 1977 (4) SA 298 (AD) at 306F-G. This case was approved by this Court in Minister of Justice v Ntuli [1997] ZACC 71; 997 (3) SA 772 (CC); 1997 (6) BCLR 677 (CC) at paras 22-3 and Ex parte Women’s Legal Centre: In re Moise v Greater Germiston Transitional Local Council

[2001] ZACC 2; 2001 (4) SA 1288 (CC); 2001 (8) BCLR 765 (CC) at paras 8-9.

6Ordinance 15 of 1985.

7Act 28 of 2002.

8Act 107 of 1998.

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