

SOUTH AFRICA / JUDGMENT

NAD Property Income Fund (Pty) Ltd v South African National Roads Agency Limited

(2137/2020) [2024] ZALMPPHC 92 (7 August 2024)

[2024] ZALMPPHC 92

COURT

Limpopo High Court, Polokwane

BEFORE

Diamond

CASE / FILE NUMBER

2137/2020

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

(LIMPOPO DIVISION,

POLOKWANE)

CASE

No: 2137/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE

JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: DIAMOND AJ

DATE: 7/08/2024

In the matter between:

NAD PROPERTY INCOME FUND

(PTY)

LTD

APPLICANT

and

THE SOUTH AFRICAN

NATIONAL

ROADS AGENCY LIMITED

RESPONDENT

REVISED JUDGMENT

DIAMONDAJ:

[1]

The

Applicant issued a summons against the respondent to determine compensation for a piece of land expropriated by the relevant authority.[1]

[2]

A full trial ensued, and this court gave judgment on 19 January 2024.

[3]

The judgment of the court entailed the following:

the court determined that SANRAL shall pay an amount of R 933 509-52.

The Plaintiff

initially claimed an amount of R 15 484 382.00,

and in amendment of pleadings, eventually increased this amount.

It

is therefore clear that this court valued the Property at an amount substantially less than what was claimed by the Plaintiff.

Regarding

costs, the court ruled that it was justified to deviate from the formula prescribed in section 15(2) of the Expropriation Act, and

awarded costs in favour of the Plaintiff, a substantial portion of which was on a scale as between attorney and client.

[4] NAD applies for leave

to appeal against the determination of the compensation amount and SANRAL applies for leave to appeal against the costs order.

[5]

This court opines that it is justified to grant leave to appeal to both NAD and SANRAL in this application.

[6]

The considerations to be taken into account, in an application for leave to appeal, are prescribed by section 17. Section 17(1)

stipulates as follows:

"17 Leave to appeal

(1)

Leave to appeal may only be given where the judge or judges concerned are of the opinion that- (a)

(i)

the appeal would have a reasonable prospect of success; or

(ii)

there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[7]

In

the initial notice of the application for leave to appeal, NAD raised its application for leave to appeal on several aspects of the

judgement, in which in the submission of NAD, the court erred with

regard to, for instance, factual evidence and the inferences that the court draws from factual evidence. To name but one such instance, NAD submits that the court erred in that it when the final award was made, completely ignored the calculations made by its valuation expert, Mr Parfitt. NAD is indeed correct that the court did ignore the calculations of Mr Parfitt, but substantial reasons were given for that, and this court is not satisfied that another court will come to a different conclusion. This submission of NAD, as well as several others, revolve around the requirements outlined in section 17(1)(a)(i) of the Act. In view of what is stated further in this judgement, I do not elaborate on any of these aspects.

[8]

Section 17 (1)(a)(ii) deals with the second ground for leave to appeal and that is that there is some other compelling reason why an appeal should be heard.

[9]

As was described in the judgment, the court was confronted with a situation in which a valuation had to be made of an awkward expropriation in very peculiar circumstances.

[10]

The court had to approach the entire question on a clear basis, that is the application of the Expropriation Act, the Sanral Act, within the context of section 25 of the Constitution.

[11]

In *Du Toit v Minister of Transport*[2]

Langa ACJ stated the following:

"The question of the relationship between section 12 of the Expropriation Act and section 25(3) of the Constitution should, in my view, stand over for another day."

[12] This court had to

arrive at some conclusion as the basis on which it would approach the relationship between the Expropriation Act and Section 25 (3) of the Constitution.

[13]

This, the court did in Paragraphs 18 - 48 of its judgment. Amongst others, this court stated that it is duty-bound to arrive at a determination of the market value of the expropriated portion of the property, on a legal basis, and not by exercising any

discretion. But the court also opined that the other factors mentioned in section 25 (3) entail exercising a judicial discretion.[3]

[14]

There are several further considerations that point to the fact that leave to appeal should be granted to NAD. Amongst others, NAD stated during argument for leave to appeal that the entire concept of "actual financial loss" and the method applied by this court in the judgment has not previously been applied in any other court. For this reason, so NAD submits, that the judgment involves a question of law that is of crucial importance in expropriation matters and for that reason it is appropriate that the Supreme Court of Appeal should have the opportunity to express itself on this issue. I agree with the contention of NAD.

[15]

SANRAL applies for leave to appeal against the order for costs granted against SANRAL. As was stated in the judgment, the court deviated from the formula prescribed for a costs order in Section 15(2) of the Expropriation Act, for the reasons set out in the judgment. Also, as far as can be established, the Supreme Court of Appeal has thus far never authoritatively expressed itself on this issue. The Supreme Court of Appeal should have the opportunity to do so.

[16]

Leave to appeal should consequently be granted to Sanral, with regard to the order for costs. This court consequently

makes the following order:

- (a)
Leave to appeal is granted to both the Applicant, to the Supreme Court of Appeal.
 - (b)
Leave to cross appeal with regard to the order of costs, is granted to the Respondent, to the Supreme Court of Appeal.
 - (c)
The costs of this application are to be costs in the appeal.
- DIAMOND AJ
Acting Judge of the High Court
Limpopo Division,
Polokwane

APPEARANCES: HEARD
ON
:
17 April 2024

JUDGMENT

DELIVERED ON : 7 AUGUST 2024. This revised judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the revised judgment is deemed to be 7 AUGUST 2024. FOR THE APPLICANT : NGO MARITZ SC and JA VENTER INSTRUCTED BY : Ivan Pauw and Partners Attorneys travis@ippartners.co.za pierre@ippartners.co.za FOR THE RESPONDENT : RF de Villiers INSTRUCTED BY : Mokgadi Attorneys refilwe@rnokgadiattorneys.co.za

[1] This judgment will refer to the Applicant in this application (the Plaintiff) in the trial as NAD, and do the respondent in this

application, the(first respondent) in the trial, as SANRAL.

[2] 2005

(11) BCLR 1053 (CC), Par 89.

[3] NAD amongst others, stated in its application for leave to appeal that the court erred in this regard.

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