



## 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:** 17 December 2021

**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*

*Graham Robert Herbert N O and Others v Senqu Municipality and Others* (Case no 742/2020) [2021]  
ZASCA 177 (17 December 2021)

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Today the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment and order of the Eastern Cape Division of the High Court, Grahamstown.

The issue concerned the interpretation of the Upgrading of the Land Tenure Rights Act 112 of 1991 (Upgrading Act) which makes provision for the upgrading and conversion into ownership of certain rights, such as Permission to Occupy, in respect of land. The question was whether the Upgrading Act excludes the appellant from a class of persons who may apply for a conversion into full title a Permission to Occupy granted in respect of land situated in Sterkspruit, and, if it fails to do so, whether such failure renders it unconstitutional as contended by the respondent.

The Permission to Occupy was granted to the appellant's predecessor in title pursuant to the provisions of the then Native Trust and Land Act 18 of 1936, which provided for the establishment of a corporate body known as the South African Native Trust to hold land on behalf of the Africans. In terms of the Permission to Occupy the appellant's predecessor in title was entitled to occupy Erf 88 Sterkspruit from which it conducted recruitment of labour business. The Permission to Occupy was subsequently ceded to the appellant. The appellant contending that it was entitled to apply for conversion into full title of its Permission to Occupy requested the respondent to submit to the Deeds Registry offices on its behalf an application for the conversion. When the respondent failed to accede to its request, the appellant approached the high court for a declarator and an order directing the respondent to submit to the Registrar of Deeds an application for a conversion. The high court dismissed its application holding that the appellant failed to show that it fell within a class of persons in whose interest the Upgrading Act was enacted. On appeal the appellant contended the Upgrading Act did not exclude it from a class of persons who could apply for conversion of its tenuous title in respect of land.

The SCA dismissed the appeal. It held that the Upgrading Act should be understood within South Africa's painful historical context in order to facilitate transformation of South African society. The SCA held further that the interpretation of the Upgrading Act contended for by the appellant undermined the purpose and objective of the Upgrading Act. It was never disadvantaged by past racially discriminatory laws. Rather, it participated in the exploitation of discriminatory legislation, and the Upgrading Act specifically applied to persons who were prejudicially affected by past discriminatory laws and practices.

The SCA dismissed the appeal with costs.

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