

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Xolisile Zondi v MEC for Traditional and Local Government Affairs and Others

Case CCT 73/03

Decided on 15 October 2004

Media Summary

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The Constitutional Court today confirms in part an order by the High Court in KwaZulu-Natal, delivered on 11 December 2003, declaring invalid the provisions of the Pound Ordinance 32 of 1947, KwaZulu-Natal (“Ordinance”) challenged by the applicant. This follows an appeal by the first respondent, the Member of the Executive Council for Traditional and Local Government Affairs (“MEC”), against the High Court order.

The challenged provisions gave power to landowners and poundkeepers to seize and impound livestock found trespassing on land. They also gave power to the poundkeepers to sell the impounded animals to recover the pound fees. All of this occurs without a court order.

The case was brought by the applicant, an unemployed and landless widow who lived on a farm in KwaZulu-Natal with her deceased husband for over 24 years. Her only asset is some livestock that she kept on the farm. The fourth respondent, a farmer and owner of the farm on which the applicant and her deceased husband resided, gave the applicant a one-month notice to remove her livestock from the farm. It was not clear on the papers why the notice was given, but it threatened to impound the applicant’s livestock if they were not removed. The applicant approached the High Court and sought an order declaring certain provisions of the Ordinance unconstitutional on the grounds that, amongst others, they authorise self-help and limit the constitutional right of access to courts and that they violate the constitutional rights to equality and to administrative action.

The High Court found that certain provisions of the Ordinance indeed violate those constitutional rights and others.

In this Court, Ngcobo J, in a unanimous judgment, confirms in part and dismisses in part the High Court order. He held that the combined effect of certain provisions among those challenged, created an impounding scheme that, from seizure of the animals to execution of their sale, did not involve the judicial process and did not provide for notice to livestock owners where they could, with reasonable diligence, be identified.

The Court also holds that one of the provisions discriminated against black people, landless black people in particular, on the basis of color and landownership and therefore violated the constitutional right to equality.