Ehlers and Others v Rand Water Board

Supreme Court of Appeal - 2004/484	Hearing date: 18 November 2005 Judgment date: 30 November 2005

Removal of habitable buildings and structures in a Sectional Titles Scheme deemed to be a Regional Structure Plan in terms of s 37(2)(a)(i) and (ii) of the Physical Planning Act 125 of 1991 requiring, inter alia, written consent for habitable buildings or structures to be permitted below the defined flood control line.

Summary of Judgment

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Summary of judgment
Full judgment

The Supreme Court of Appeal today dismissed, with costs, an appeal by Mr Dirk Ehlers against an order granted against him by the High Court of the Free State requiring him to remove certain habitable buildings and structures. He had erected the structures on two sectional title units in Klub 40. The units fall within the Vaal River Barrage area and are riparian to the Vaal River.

The Units were acquired from Anniesrus Ontwikkelings (Pty) Ltd (the company).

Judge Zulman delivering the unanimous judgment of the Court (Judges Mpati, Cameron, Nugent and Acting Judge Compbrinck concurring) held that the company had a legal obligation in terms of a Regional Structure Plan relating to the area, to obtain the written consent of the Rand Water Board for the erection of any habitable structures below the defined flood control line. As Mr Ehlers, a successor in title to the company, had not established that such consent had been obtained, he was obliged to remove the structures in question.