

# CONSTITUTIONAL COURT OF SOUTH AFRICA

**Fuel Retailers Association of Southern Africa**

**and**

**Director General Environmental Management, Department of Agriculture,  
Conservation and Environment Mpumalanga Province and Others**

**CCT 67/06**

**Judgment date: 7 June 2007**

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## **MEDIA SUMMARY**

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*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.*

Today the Constitutional Court handed down judgment in an application for leave to appeal against the decision of the Supreme Court of Appeal. The case concerns the nature and scope of the obligations of environmental authorities when they make decisions that may affect the environment, in particular, the interaction between socio-economic development and the protection of the environment.

The case involved an application for a filling station in White River, Mpumalanga. Inama Trust applied to the Mpumalanga environmental authorities for authorisation to construct a filling station in White River, Mpumalanga. Fuel Retailers Association of Southern Africa, an organisation which represents the interests of fuel retailers, the applicant in the proceedings in the Constitutional Court, objected to the construction of the filling station on various grounds, including that the construction of the filling station will have an adverse impact on the environment. The applicant insisted that the environmental authorities should consider whether the proposed filling station would be socially, environmentally and economically sustainable as required by the laws governing the protection of the environment. Despite this objection, the environmental authorities granted authorisation to the Inama Trust to construct the filling station. An internal appeal by Fuel Retailers Association was unsuccessful.

The applicant thereafter approached the Pretoria High Court seeking an order setting aside the granting of the authority to construct the filling station. It alleged that the environmental authorities did not consider whether the proposed development would be socially, environmentally and economically sustainable. It further alleged that the evaluation that had been conducted by the Town Planning Authorities some seven years earlier, when an application for rezoning for the purposes of establishing the filling station was considered, does not satisfy the requirement of the environmental legislation. The environmental authorities and Inama Trust opposed the application alleging that the socio-economic aspects of the construction of a filling station had been duly considered by the local authority when it considered the rezoning of the property for the purposes of constructing the filling station in question.

The Pretoria High Court dismissed the application. The appeal of Fuel Retailers Association to the Supreme Court of Appeal was equally unsuccessful.

In a judgment concurred in by all the justices except Sachs J, Ngcobo J held that the Constitution recognises the interrelationship between the protection of the environment and socio-economic development. It contemplates the integration of environmental protection and socio-economic development and envisages that the two will be balanced through the ideal of sustainable development. He held that sustainable development provides a framework for reconciling socio-economic development and environmental protection and thus acts as a mediating principle in reconciling environmental and developmental considerations

Ngcobo J held that the obligation of the environmental authorities to consider socio-economic factors includes the obligation to consider the impact of the proliferation of filling stations and of proposed filling station on existing ones. This obligation is wider than the requirement to assess need and desirability under the Ordinance. It also comprehends the obligation to assess the cumulative impact on the environment of the proposed development.

He reasoned that unsustainable developments are in themselves detrimental to the environment if a development such as a filling station may have a substantial impact on the environment. The proliferation of filling stations poses a potential threat to the environment, which arises from the limited end-use of filling stations upon their closure. However, he stressed that the objective of considering the impact of a proposed development on existing ones is not to stamp out competition; rather it is to ensure the economic, social and environmental sustainability of all developments. The filling station infrastructure that lies in the ground may have an adverse impact on the environment.

He held that the authorities misconstrued the nature of their obligations and as a consequence failed to comply with a compulsory and material condition prescribed by the law for granting authorisation to establish a filling station.

Ngcobo J accordingly granted the application for leave to appeal and upheld the appeal. He set aside the decision of the environmental authorities granting authorisation to construct the proposed filling station and ordered the environmental authorities to reconsider the application by Inama Trust in the light of the judgment. In addition, he ordered the environmental authorities to pay the costs of the application.

In a separate judgment Sachs J associated himself in all respects with the judgment of Ngcobo J save for the materiality of the failure by the environmental decision-makers. In his view, this failure was innocuous as far as the environment was concerned, and had formal rather than substantive significance. Holding that the purpose of environmental law was to protect the environment and not the profits of incumbent petrol stations, he would support the findings of the High Court and the Supreme Court of Appeal, and dismiss the appeal.