



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Minister of Local Government, Environmental Affairs and Development Planning,
Western Cape v The Habitat Council and Others; Minister of Local Government,
Environmental Affairs and Development Planning, Western Cape v City of Cape
Town and Others**

CCT 117/13

**Date of hearing: 10 February 2014
Date of judgment: 4 April 2014**

MEDIA SUMMARY

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

Today the Constitutional Court handed down a judgment confirming an order of the Western Cape High Court, Cape Town (High Court) which declared section 44 of the Land Use Planning Ordinance (LUPO) unconstitutional and invalid.

The provision gave the Western Cape provincial government (Province) the power to hear appeals against municipalities' planning decisions and to replace those decisions with its own. The matter arises from two cases in which the Western Cape's Minister of Local Government, Environmental Affairs and Development Planning (Provincial Minister), acting in terms of section 44, overturned planning decisions by the City of Cape Town.

The High Court held that the section was manifestly inconsistent with the Constitution. This was because, although the Constitution reserves municipalities' authority over "municipal planning", the provision allows the Province to hear appeals against all municipal decisions made under LUPO. The High Court accordingly declared section 44 unconstitutional and invalid, suspending its declaration for 24 months to allow Parliament to amend the section. In the interim, the High Court ordered that LUPO should read so as to allow appeals to the Province in two circumstances. The first is where the decision relates to circumstances in which a Province's and a municipality's constitutional planning competences overlap. The second is where it is necessary for the Province to

exercise its constitutional power of oversight to ensure municipalities' effective performance of their functions.

The Provincial Minister argued that the Constitutional Court should confirm the High Court's order entirely, including the continuing provincial power to hear appeals against municipal planning decisions. He contended that some municipal planning decisions have province-wide effects and the Province should have some power over such decisions.

The City of Johannesburg Metropolitan Municipality (City of Johannesburg), which was admitted as a friend of the Court, opposed this. It argued that the Provincial Minister has no constitutionally permissible power to intervene in particular municipal decisions.

In a unanimous judgment written by Cameron J, the Constitutional Court confirmed that section 44 is unconstitutional. In terms of the Constitution's division of governmental powers, municipalities are responsible for the planning decisions with which LUPO deals. Provinces are not. The Court therefore confirmed the High Court's order of invalidity.

However, the Court did not confirm the rest of the High Court's order. It rejected the Provincial Minister's argument and held that there are no circumstances in which a provincial appellate power over municipal planning decisions is permissible. The Province's overlapping planning competences are exercised through separate statutory mechanisms and not by intervening in particular municipal decisions. There is also no need to preserve those appellate powers in the interim. The Province has other, separate powers that allow it to prevent developments that may trench upon provincial interests. In addition, the Province's oversight powers do not entail any right to hear appeals against municipal planning decisions.

Finally, the Court held that there were no practical difficulties that justified a suspension of its order of invalidity. However, there would be chaotic consequences if its order were to have retrospective effect. It concluded that its order should take effect immediately but exempt appeals that have already been filed, but not yet finalised, under section 44.