



IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

CASE NO: 809/2013

Not Reportable

In the matter between:

EYE OF AFRICA DEVELOPMENTS (PROPRIETARY) LIMITED

Appellant

and

SHEAR, CAROLINE NICOLA

First Respondent

THE MINISTER OF WATER AND ENVIRONMENTAL

AFFAIRS

Second Respondent

THE REGIONAL HEAD, GAUTENG REGION DEPARTMENT

OF WATER AFFAIRS AND ENVIRONMENTAL AFFAIRS

Third Respondent

THE DEPARTMENT OF WATER AFFAIRS AND ENVIRONMENTAL

AFFAIRS

Fourth Respondent

L J LEKALE N.O.

Fifth Respondent

Neutral Citation: *Eye of Africa Developments v Shear and others* (809/2013) [2014]
ZASCA 100 (19 August 2014).

Coram: Navsa ADP, Tshiqi, Swain and Mbha JJA, Dambuza AJA

Heard: 19 August 2014

Delivered: 19 August 2014

Summary: S 21A of the Supreme Court Act 59 of 1959 – appeal dismissed on the basis that an order will have no practical effect or result.

ORDER

On appeal from: The South Gauteng High Court, Johannesburg (Windell AJ sitting as court of first instance).

The following order is made:

1. The appeal is dismissed on the basis of s 21A of the Supreme Court Act 59 of 1959, in that the judgment or order sought will have no practical effect.
2. The appellant is to pay the respondent's costs, including the costs of two counsel.

JUDGMENT

The Court:

[1] We have taken into account the admission on behalf of counsel for the appellant that there was no longer any draw-down on underground water as there was presently sufficient grey-water to irrigate the golf-course and the concession that the environmental authorisation for the establishment of the golf-course which restricted irrigation of the golf-course to grey-water produced on the residential estate remained in stead in terms of the judgment of this court in *Eye of Africa Developments v Shear* 2012 (2) SA 186 (SCA). In light of this counsel for the appellant was constrained to concede that the appeal is liable to be dismissed on the basis of s 21A of the Supreme Court Act 59 of 1959, in that any judgment or order will have no practical effect or result. This, of course, has as a result that the order of the high court remains extant.

[2] The concession was only made at the commencement of proceedings before us and after questions were put to the counsel for the appellant. The issues raised in the heads of argument were involved and in our view justifies the costs of two counsel.


[3] The following order is made:

1. The appeal is dismissed on the basis of s 21A of the Supreme Court Act 59 of 1959, in that the judgment or order sought will have no practical effect.
2. The appellant is to pay the respondent's costs, including the costs of two counsel.



MS NAVSA

ACTING DEPUTY PRESIDENT



Z L L TSHIQI

JUDGE OF APPEAL



K G B SWAIN

JUDGE OF APPEAL



B H MBHA

JUDGE OF APPEAL

A handwritten signature in black ink, appearing to read 'N Dambuza', written over a horizontal line.

N DAMBUZA

ACTING JUDGE OF APPEAL

APPEARANCES:

FOR APPELLANT:

Adv. A P Bruwer

Instructed by:

Du Plessis De Heus & Van Wyk, Johannesburg
Symington & De Kok, Bloemfontein

FOR FIRST RESPONDENT:

Adv. G I Hulley (with him K Millard)

Instructed by:

McKenzie, Van der Merwe and Willemse, Kempton Park
Jordaan Rijkheer and Partners, Bloemfontein