



STAY IN YOUR ZONE

SUMMARY OF THE CONSTITUTIONAL COURT RULING ON WHETHER INDIVIDUAL OWNERS OF SECTIONAL TITLE PROPERTIES CAN ENFORCE ZONE RULES.

In this case (decided April 24, 2019), the Constitutional Court ruled on whether individual owners of sectional title properties can enforce zoning rules when someone breaks them.

Background

Some residents in a Cape Town property (Spilhaus and others) wanted to stop MTN, a telecom company, from keeping a cellphone mast on the rooftop of their building. The rooftop was common property (shared by all owners), and the mast was installed without proper city zoning approval or permission to change the property's title deed.

The Issue

MTN argued that only the body corporate can take legal action, not individual owners. The Supreme Court of Appeal agreed with MTN, saying individual owners didn't have the right to sue on their own.

The Constitutional Court's Decision

Supreme Court of Appeal. It said individual owners do have the right to enforce zoning rules if those rules are meant to protect them. This right comes from common law (traditional legal principles) and doesn't depend on the body corporate. The Court ruled that the owners could take MTN to court to remove the mast because the zoning violation affected their interests.

Why it Matters?

This judgment means that if someone breaks zoning rules on shared property in a sectional title scheme, individual owners can take legal action themselves. They don't need to wait for the body corporate to act, and they don't have to prove they're acting on behalf of the body corporate.

The Parties and the Property

- **Applicants:** Owners of sectional title units 3 to 19 in the New Court at Alphen scheme, Constantia, Cape Town.
- **First Respondent:** MTN Mobile Telephone Networks (Pty) Ltd, who installed a cell phone mast on the roof of the Mill Range Building.
- **Second Respondent:** Alphen Farm Estate in Constantia (Pty) Ltd, owner of sections 1 and 2, including the Mill Range Building.

The building's roof is common property. MTN's cell phone mast installation breached zoning regulations and title deed restrictions, leading the applicants to seek removal orders.

Factual Background

- MTN leased roof space from Alphen since 1999, prior to the sectional title scheme registration.
- After scheme registration, the roof became common property, but MTN continued paying rent to Alphen, not the body corporate.
- The cell phone mast installation violates City of Cape Town zoning scheme regulations:
 - No City consent for the use (rooftop base telecommunication system).
 - The mast exceeds the permitted three meters height by extending five meters above the roof.
- The installation also breaches conditions registered against the property's title deed.
- The City's enforcement notices were served on Alphen, and MTN's application for consent use stalled.
- The body corporate was not involved in the application or proceedings.

Conclusion

In short, the Spilhaus case gave individual property owners a stronger voice to protect their rights when zoning rules are violated on shared property.



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