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HOME OWNERS ASSOCIATIONS RULES CHALLENGED

Singh and Another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC)

On appeal from the High Court, Kwazulu-Natal Division, Durban the facts in the matter were the follows:

During October 2013 Mr Singh's daughter was issued with three speeding fines by officials of the association for speeding on the roads in the estate and the fines were levied against Mr Singh's account as the owner and representative family member.

When Mr Singh's fines remain unpaid the family's access along the roads to their home was suspended effectively barring the Singh's from passing through the association's boom control located at the entry to the estate.

This matter was escalated to the High Court, Kwazulu-Natal Division, Durban and the following three issues were raised, the first related to the enforcement of the traffic rules by the association the second related to the association's refusal to allow contractor's that Mr. Singh has employed access to the estate, and the third related to restriction imposed by the estate on domestic workers.

The specific conduct rules challenged by Mr Singh were;

1. The road rules which permit the association to police the roads in the respect of speed and speeding fines. Mr Singh contended that the association was carrying out functions of traffic officers as defined in the National Road Traffic Act 93 of 1996
2. the contract rules which restricts rights of the owner to choose a contractor or service provider
3. the domestic rules which imposes restrictions on domestic workers employed by the owners and residents relating to their working hours, their movement in and out of the estate and that they may not walk in public roads within the estate during working hours

Mr Singh's legal team advanced the following arguments regarding the road rules:

1. The National Road Traffic Act, 93 of 1996 provides in section 56(2) thereof that only the Minister may prescribe road traffic signs
2. The National Road Traffic Act, 93 of 1996 provides in section 59(1) thereof that general speed limit on a public road in an urban area shall be as prescribed by the Minister in the regulations under The National Road Traffic Act which prescribes a maximum speed of 60 km per hour
3. The National Road Traffic Act, 93 of 1996 provides in section 59(2) that the Minister or any person authorised by him or the CEO of the Road Traffic Management Corporation or Local Authority may display road signs on any public road
4. The National Road Traffic Act, 93 of 1996 provides in section 57(6) that the MEC concerned may authorise any association or club to display any such road traffic signs on any public road
5. The National Road Traffic Act, 93 of 1996 provides in section 57(10) that no person shall display any road or traffic sign on a public road unless having been authorised thereto

Section 156(5) of our Constitution provides that the municipality has the right to exercise any power reasonably necessary to perform its prescribed functions, one of which being road traffic regulations.

Fines are prescribed in the Criminal Procedure Act 51 of 1977 for speeding which is a fine issued by a peace officer such as a traffic officer and therefore in terms of the CPA only.

Peace officers, who may also be traffic officers are empowered to regulate control and monitor traffic on public roads.

The Association advanced the following arguments regarding the road rules:

1. The right of the association to regulate the road rules stems from the contractual relationship between the association and all its members who buy into the estate and freely agree to be subject to and conduct themselves in line with the rules of the estate when they do so
2. They argued that the association rules operate as a parallel system to the statutory rules in The National Road Traffic Act, 93 of 1996
3. The association does not purport to utilise, invoke or usurp the powers under the NRTA
4. They referenced in support of their contentions the unreported Bushwillows case where the rules of the association empowered the trustees of the association to approve or disprove the colour owners in the association were allowed to paint their homes. The court found in favour of the association by demanding that the owner repaint his house with an approved colour after he painted lime green stripes on his home.

The Appeal Court made the following findings:

1. The need for private bodies such as the association to regulate traffic on and access to the public roads is recognised by the NRTA and such private bodies are obliged to seek the necessary permission from the MEC and/or municipality concerned. The association failed to apply for such permission
2. Therefore the rules and contractual arrangement with the members is illegal and the association therefore does not have the delegated authority to regulate the speed limit
3. Furthermore the rule regarding the use of the public road has a public content, unlike rules relating to the size and breeds of dogs that may be kept contractually in an association or the colour that owners may paint their homes

As regards the domestic workers' rules, to the extent that the rules restrict the rights of domestic workers from freely being on and traversing public roads the court found them to offend against the domestic workers fundamental rights to human dignity, equality, freedom of association, freedom of movement, freedom of occupation and unfair labour practice. These rules were found to be unreasonable and unlawful.

In conclusion the Appeal Court found the road rules and domestic rules to be invalid but they suspended the invalidity for 12 months so as to provide the association the opportunity to obtain the necessary authorisations/consents under The National Road Traffic Act, 93 of 1996.