



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**City of Tshwane Metropolitan Municipality v Link Africa (Pty) Limited and Others**

**CCT 184/14**

**Date of hearing: 12 May 2015**  
**Date of judgment: 23 September 2015**

---

### 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 in a matter concerning the interpretation and constitutionality of provisions of Electronic Communications Act that grants a licence holder the right to access land for the purposes of constructing and maintaining an electronic communications network or facilities.

The respondent, Link Africa (Pty) Limited (Link Africa), constructs and maintains fibre electronic communications for commercial benefit. It installs its infrastructure on the underground infrastructure of municipalities, like water and sewage systems, which it has the right to do as a licence holder under the Act. In November 2013 Link Africa notified the applicant, City of Tshwane Metropolitan Municipality (City), of its decision to install fibre optic cable networks in the City's existing underground infrastructure.

The City applied to the North Gauteng Division of the High Court (High Court) seeking to halt the proposed installations. It also sought a declaration that a provision of the Act required Link Africa to obtain the City's consent before the installation of the fibre network as well as an order directing Link Africa to remove the cables already installed. Alternatively, the City challenged the constitutional validity of certain provisions of the Act on the basis that they allow for arbitrary deprivation of property and force municipalities to accept services from licence holders contrary to a procurement provision in the Constitution. The High Court held that the Act did not authorise arbitrary deprivation of property; instead, the fibre-optic cables installed by Link Africa would benefit the businesses and residents of the City. The High Court did not rule on the challenge based on the procurement provision of the Constitution. Both the High

Court and the Supreme Court of Appeal dismissed the City's applications for leave to appeal.

Before this Court, the City persisted with the arguments it advanced in the High Court. With the exception of Msunduzi Municipality and SMI Trading, Mobile Telephone Networks (Pty) Ltd (MTN), Neotel (Pty) Ltd, Telkom SOC and Dark Fibre Africa (RF) (Pty) Ltd, all holders of licences in terms of the Act were joined to these proceedings due to their direct and substantial interest in the application.

The majority judgment, written by Cameron J and Froneman J (with Khampepe J, Madlanga J, Theron AJ, and Molemela AJ concurring), found that the Act does not permit the arbitrary deprivation of property. It was found that the Act must be interpreted in accordance with the spirit, purport and object of the Bill of Rights in a manner that preserves its constitutional validity. The common law, including the common law of servitudes, is sufficiently flexible to allow licence holders to enter upon any property without the consent of the land owner provided that they exercise these rights respectfully and with due caution.

The minority judgment, written by Jafta J and Tshiqi J (with Moseneke DCJ and Nkabinde J concurring), found that the impugned provision does not require a licence holder to obtain consent from the property owner before exercising its rights under the Act. The minority would hold that the provision is constitutionally invalid because it permitted a licence holder to enter onto another's property without consent and also allows arbitrary deprivation of property. The minority disagreed with the majority judgment's interpretation of the common law. It also stated that the majority did not take the correct approach to adjudicating a constitutional challenge based on a right in the Bill of Rights.