

Constitutional Court dismisses appeal in Hartbeespoort Dam ownership case

The Constitutional Court has dismissed the appeal by Kingsley Jack Whiteaway Seale, Ontspan Bellegings (Pty) Ltd, HI Frank Components (Pty) Ltd, and Schoemansville Ouwerklub over the ownership and control of some parts of Hartbeespoort Dam and its surrounding areas.



Sailing vessels at the Transvaal Yacht Club, by [NJRZA](#) - Own work, [CC BY-SA 3.0](#), [Link](#)

The judgment was handed down last week in the case that involves the Department of Water and Sanitation (DWS), Department of Public Works, Premier of North West, Transvaal Yacht Club and Registrar of Deeds.

“This landmark ruling is a turning point since it grants the Department of Water and Sanitation and other respondents the rights to manage Hartbeespoort which is a tourist attraction and the dam itself which is supplied by Crocodile River as its main source of water,” the department said on Thursday.

The appeal’s dismissal by the Constitutional Court cited that the matter does not engage the court’s jurisdiction and bears no reasonable prospects of success, upholds a judgment delivered by the Supreme Court of Appeal and Gauteng Division of High Court on the 15 October 2020 and 10 May 2019 respectively.

The first appellant is Kingsley Jack Whiteaway Seale. He is a director of the second appellant, Ontspan Beleggings (Pty) Ltd and the third appellant, HI Frank Components (Pty) Ltd.

Each of the appellants owns properties that are situated adjacent, or in close proximity, to the foreshore of the Dam.

The fourth appellant is the Schoemansville Oewerklub, a voluntary association that acts in the interest of its members. The majority of its members are registered owners of erven in Schoemansville.

“The appellants launched an application in the Gauteng Division of the High Court, Pretoria for orders declaring and enforcing servitudal rights over the foreshore. The second respondent, the Minister of Water and Sanitation, opposed the application on behalf of the State. The fourth respondent, the Transvaal Yacht Club, a voluntary association that owns property adjacent to the foreshore, also opposed the application,” the department said.

In the matter that spans more than a century, the Supreme Court of Appeal ruled that the Dam was built by the government of the Union of South Africa (the Union Government) during the early part of the previous century.

“Its legal successor is the national government of the Republic of South Africa (the State), which owns a narrow strip of land on the eastern bank of the Dam between the waterline and the boundaries of the adjacent properties.

“This strip of State land has at least since 1925 been referred to as the foreshore. The appeal concerns servitudal rights of access over the foreshore for purpose of boating and fishing on the Dam,” the department said.

Through this judgment, the following discovery was also made: At the time when the Union Government determined to construct the Dam (then referred to as the Hartbeespoort Reservoir), the Schoeman family owned portions of the freehold farm Hartbeespoort nr 498 in the district of Pretoria.

“The Crocodile River, which would be the main source of water for the Dam, traversed the original farm. Johan Hendrik Schoeman and members of his family were the co-owners of the land known as the northern portion of the farm Hartbeespoort.

“Schoeman was the owner of an adjacent farm referred to as a certain portion of the south-eastern portion of the farm Hartbeespoort. Parts of these two portions of land would be submerged by the Dam,” the department said.

In the light hereof, on 25 January 1918, the Union Government, represented by the Minister of Lands, and the owners of the aforesaid portions of the farm Hartbeespoort, represented by Schoeman, entered into an agreement of sale (the 1918 agreement).

In terms thereof the Union Government purchased the portions of the aforesaid tracts of land from the Schoeman family that would be submerged by the Dam.