

Agriculture, Aquaculture & Fishing

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South Africa

- Lessons on subdivision, SALA and food security from the Tridevco judgment



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Lessons on subdivision, SALA and food security from the Tridevco judgment

The Supreme Court of Appeal (SCA) handed down judgment in the case of *Tridevco (Pty) Ltd and Another v Minister of Agriculture, Land Reform & Rural Development and Others* [2025] JDR 3247 (SCA) in which the court was asked to determine, first, whether a property owned by Tridevco (Pty) Ltd and Witfontein X16 Boerdery CC (collectively referred to as Tridevco) constituted “agricultural land” under the Subdivision of Agricultural Land Act 70 of 1970 (SALA), which would require the consent of the Minister of Agriculture, Land Reform and Rural Development (Minister) for subdivision. The Minister refused Tridevco’s application for subdivision of the property on the basis that the land was high-potential agricultural land essential for food security of the country. The second issue for determination before the SCA was whether the refusal by the Minister to approve Tridevco’s subdivision application was reviewable, rational and lawful.

Background

Tridevco applied to the Delegate of the Minister of Agriculture, Land Reform and Rural Development (Delegate) for consent to subdivide the property in order to establish a mixed-use township. The property falls within the boundaries of the Ekhurhuleni Urban Edge, i.e. the area surrounding OR Tambo International Airport. The Delegate refused the application on the basis that the land comprising the property was regarded as high-potential agricultural land which the Minister intended to preserve for agricultural purposes, and consenting to the establishment of the proposed township would defeat the purpose of SALA, which is to preserve and protect land for agricultural use. Tridevco lodged an appeal to the Minister which was subsequently rejected.

Tridevco approached the High Court for a declaratory order that the property did not constitute agricultural land for the purposes of SALA, but the High Court dismissed Tridevco’s application, agreeing with the Minister that the property did not meet SALA’s exclusion criteria.

The declaratory relief sought called for an interpretation of section 1(a) of SALA, which defined agricultural land as:

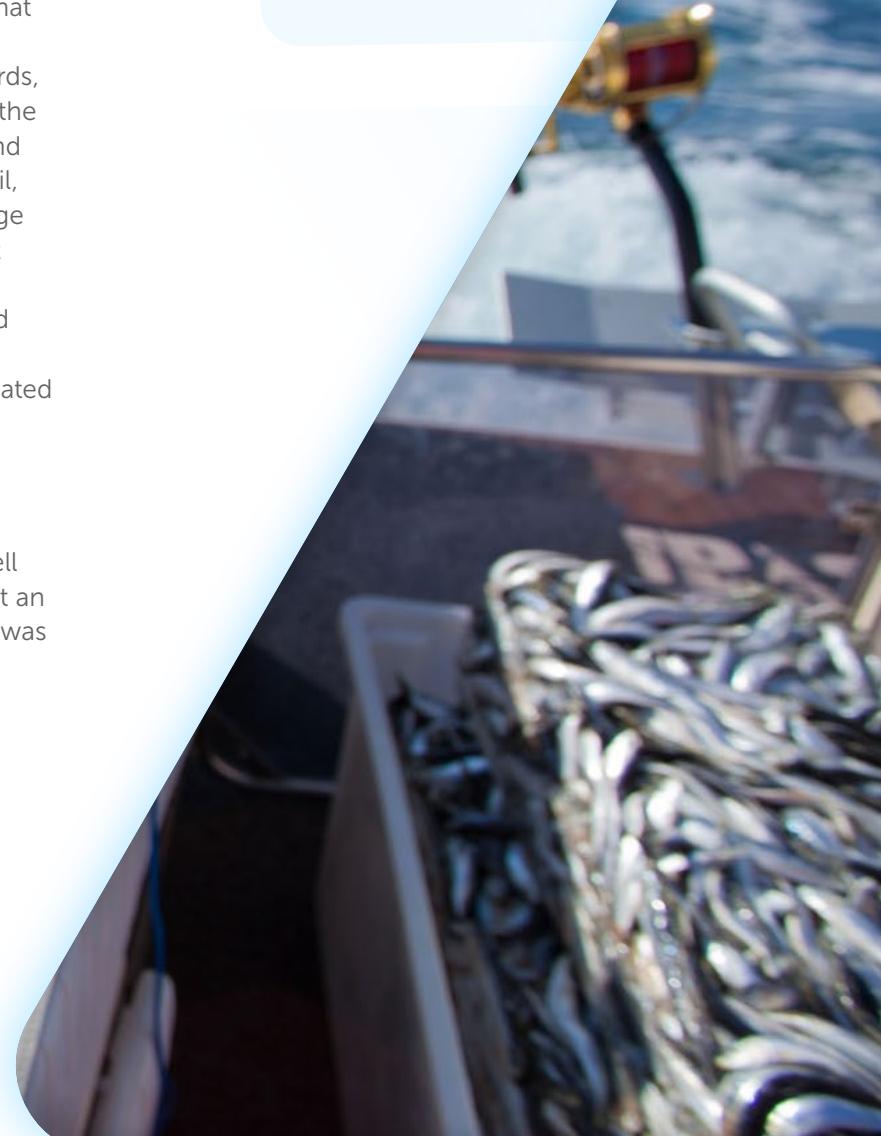
*"[L]and situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, **health board** or health committee, **and** land forming part of, in the province of the Cape of Good Hope a **local area** established under section 6 (1) (i) of the Divisional Councils Ordinance, 1952 (Ordinance No. 15 of 1952 of that province) ... but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act."* (emphasis added)

The court *a quo* found that for land to be excluded from SALA's definition of agricultural land, it must fall under the jurisdiction of both a health board and a local area committee (LAC), by objectively assessing the words used in context. Hence, the use of "**and**" indicates that the legislature intended to allow only for land which fell under the jurisdiction of those health boards, which had established an LAC, to be part of the exclusion. As Tridevco could not prove that the property fell under an LAC's jurisdiction, the High Court held that the property remained agricultural land. The court *a quo* upheld the Minister's refusal to approve the subdivision of the property on the basis that it found the Minister's decision to be lawful and rational.

SCA majority judgment

In the SCA, the majority judgment agreed with the High Court that the property did not qualify for exclusion from SALA's definition of agricultural land. Upon interpretation, the majority found that the legislature intended to only allow for land which falls under the jurisdiction of health boards, which had established an LAC, to form part of the listed exclusions under SALA. As such, if the land fell under the jurisdiction of a municipal council, city council, town council, village council, village management council or local board, it was not designated as agricultural land. Whereas if the land fell under the jurisdiction of a health board or health committee, it would only avoid being designated as agricultural land if it was also located in an area where an LAC was formed. The SCA confirmed the High Court's ruling that for land to be excluded from the definition it must fall under the jurisdiction of a health board which has established an LAC. As the property only fell under the jurisdiction of a health board, but not an LAC, it did not fall under a listed exclusion and was accordingly agricultural land.

As to the second issue, the majority judgment found that the Minister's decision to refuse Tridevco's subdivision application was reviewable due to her failure to consult the relevant municipality (which is required by the Constitution), as well as her failure to consider the municipality's Integrated Development Plan, which was consistent with Tridevco's development proposal for the property.



Accordingly, the Minister's decision was reviewable on two grounds: failure of her constitutional duty to consult, as well as failure to take into account relevant considerations. The SCA found that the consequences in both cases are so severe that they rendered the Minister's decision irrational and unreasonable.

Therefore, the majority judgment upheld the appeal in part, set aside the Minister's decision, and referred Tridevco's application for subdivision back to the Minister for reconsideration.

SCA minority judgment

The minority judgment, on the other hand, while agreeing with the conclusion reached by the majority judgment in finding the Minister's decision to be reviewable, disagreed with the majority's interpretation of SALA. The minority reasoned that the property ought to have been excluded from the definition of agricultural land because the definition does not – as the majority held – require the land to fall under the jurisdiction of a health board that established an LAC. Rather, the minority provided that the definition of exempted land takes the following form: "*land situated in the area of jurisdiction ...*, **and** *land forming part of*" (emphasis added). As a matter of grammar, the use of "**and**" preceded by a comma connotes a further item that is listed. The comma placed immediately after the conjunction "**and**" connotes a list of items and is usually used to indicate the last item.

The minority reasoned that this is precisely what is intended in the definition of excluded land, as it is land identified in two categories: first, it is land situated by reference to the area of jurisdiction of named statutory bodies of local government, and second, it is land forming part of three types of areas, one of them being an LAC. Based on this interpretation of the statute, the definition of agricultural land includes exempted land, land falling into areas of the health board, including areas forming part of an LAC. Therefore, the minority reasoned that the property ought to have fallen within the definition of exempted land under SALA.

The key takeaway from the above – notwithstanding that both judgments were primarily concerned with statutory interpretation; an exercise for legal practitioners and the courts – is first, that the interpretation of agricultural land has been clarified by the majority, and second, it highlighted the Minister's duty to consult and to consider all relevant factors before taking a decision.

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