

14 April 2026

Supreme Court of Appeal clarifies certain principles regarding expropriation and compensation

Background

The Supreme Court of Appeal, on 1 April 2026, handed down a judgment on compensation following an expropriation of property for a road to be constructed in the case of NAD Property Income Fund (Pty) Ltd v SA National Roads Agency and the Minister of Transport.¹ The appellant, NAD Property, was the owner of a property in Hoedspruit that SANRAL required for the building of a road. The Minister of Transport, at the request of SANRAL expropriated the property in 2016. NAD and SANRAL could not agree on the amount of compensation. SANRAL offered R190 777.40 while NAD wanted R16 980 000. NAD took the matter to court and the Limpopo High Court ruled that the market value of the expropriated property is but one consideration and that compensation is determined by what is just and equitable, as prescribed by s 25(3) of the Constitution. That determination is an exercise of judicial discretion, and it constitutes a true discretion. The High Court decided that NAD should be compensated on the basis of the pro rata amount of the purchase price of the property that represents the value of the asset. The property was purchased by NAD for the amount of R174,82 per square meter. The expropriated portion of the property is an area of 5101 square meters. The amount of the compensation the High Court found to be due was thus R891 756,82. The High Court then added a solatium and thus ordered SANRAL to pay compensation in the amount of R933 509.52. NAD then appealed the judgment.

¹ *NAD Property Income Fund (Pty) Ltd v The South African National Roads Agency SOC Limited and Another (710/2024) [2026] ZASCA 42 (1 April 2026)*

Judgement of the Supreme Court of Appeal

The Supreme court reaffirmed the Constitutional Court's ruling in *Du Toit v Minister of Transport*²: The Du Toit judgement required a two-step approach:

1. First, determine compensation under s 12(1) of the Expropriation Act 63 of 1975 (the “market standard”).
2. Then, assess whether that amount is just and equitable under s 25(3) of the Constitution.

The Appeal Court rejected the High Court's view that determining compensation is a matter of “true discretion.” The Court held that courts must make objective findings of fact based on the relevant circumstances, including those listed in s 25(3) of the Constitution (e.g., market value, history of acquisition, use, purpose of expropriation). The Appellate Court made it clear that compensation either meets the constitutional standard, or it does not; it is not a matter of judicial preference or discretion.

There was a dispute regarding the value of the potential future use of the property. NAD's expert valued the property based on potential for a shopping centre (R16.9 million loss), while SANRAL' expert relied on actual purchase and resale transactions, yielding a lower figure (R1.6 million). The Court emphasized that actual sales evidence provides a strong benchmark, but potential use must still be tested against feasibility. Because the High Court failed to apply the correct two-stage test, the Appeal Court remitted the matter for further evidence and recalculation of compensation. NAD's appeal succeeded with a cost order in their favour and the High Court was ordered to hear further evidence in the matter.

Key Takeaways

- The two-step test in the *Du Toit* judgement of the Constitutional case must be applied to determine just and equitable compensation. “This represents a two-stage relationship between the statutory standard of market value and the constitutional standard of just and equitable compensation.”³
- Market value remains central but must be tested against section 25(3) of the Constitution.
- Market value sets the presumptive standard against which consistency with justice and equity must then be determined. “That is done, in the first place, by a court

² *Du Toit v Minister of Transport* (CCT22/04) [2005] ZACC 9; 2005 (11) BCLR 1053 (CC); 2006 (1) SA 297 (CC)

³ Paragraph 13 of the judgement

making the findings of fact required to have regard to all relevant circumstances, including those enumerated in s 25(3).”⁴

- Potential use value is a valid factor, but only if realistically feasible and factored into buyer-seller negotiations.
- Risk of expropriation affects valuation but does not automatically negate potential use.
- Courts must apply an objective standard, based on the relevant circumstances in the case, not broad discretion, when deciding compensation.” These circumstances are matters of fact that a court, where relevant, must determine. They are not discretionary considerations. “⁵

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⁴ Paragraph 18 of the judgement.

⁵ Paragraph 16 of the judgement