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# Yacht club sails off with Hartbeespoort access

## The Transvaal Yacht Club

has regained the use of part of the Hartbeespoort dam foreshore.

The Supreme Court of Appeal ruled that when the government of North West allowed one owner of a waterside property to register his right to the exclusive use of part of the foreshore, it did so acting on the wrong legal advice.

Justice of Appeal Tom

Cloete said the legal question the court had to answer was whether it could be considered an "administrative action" if the state sells or gives away a right in a property.

The appeal was brought by the trustees of the Transvaal Yacht Club. The TYC owns property on the northern side of Hartbeespoort Dam. Jack Kingsley owns the property next to that of the TYC. The

northern foreshore of the dam – owned by the government of the North West – forms the southern boundary of both these properties.

Since 1922 the TYC had been leasing the foreshore bordering on their own property, and that of Kingsley.

In December 1999, while negotiations were under way to extend this lease, the government of North West

approved the registration of a servitude that gave Kingsley the exclusive use of a part of the foreshore previously used by the TYC.

The TYC asked the court to help them stop this – or at least hear their reasons why this should not be done. They asked for help in terms of the Promotion of Administrative Justice Act.

They said the TYC had a

"legitimate expectation" that their lease agreement would be renewed and asked the court to intervene.

When their case was heard by the Pretoria High Court, Judge Willie Hartzenberg ruled that what the North West government did was not administrative action and could not be reviewed under the Promotion of Administrative Justice Act.

The TYC appealed to the Supreme Court of Appeal.

Yesterday Judge Cloete gave them back the right to use all of the foreshore that they had been using.

"The dam is a valuable recreational resource available to the public at large. The state owns the foreshore. If the North West government grants a perpetual right over part of the foreshore to the exclusion of all other persons, it will significantly curtail the access to this resource by the public," he said.