



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 15 June 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Le Roux v Zietsman and Another* (330/2022) [2023] ZASCA 102 (15 June 2023)

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal with costs against the decision of the Limpopo Division of the High Court, Polokwane (the high court).

The facts of the matter were as follows. In July 2011, Mr Christiaan Frederik Zietsman and Mrs Ester Petronella Zietsman (the respondents) bought a guesthouse situated in Tzaneen, Limpopo from the appellant, Mr Jan Pieter le Roux. Barely three months after they had taken occupation of the property, it rained heavily. There was extensive leaking of the entire roof. The guesthouse was flooded with water. And the furniture and linens were soddened. The respondents were compelled to repair the roof at a cost of R241 281.76. In addition, for the two months that the guesthouse was under repair, they could not conduct business. As a result, they lost the income which would have been generated during that period.

Consequently, the respondents sued the appellant in the Regional Court of Limpopo, Tzaneen (the regional court) for damages in the amount of R241 281.76 (for the first claim, based on fraudulent non-disclosure) and for R102 725.04 (for the second claim, based on loss of income). The regional court found in favour of the respondents. And declared that the appellant was liable to pay for the damages in the amount of R167 480.23 for the repairs of the property and an amount of R68 038.00 in respect of the loss of income. Aggrieved by the decision of the regional court, the appellant appealed to the high court, which dismissed the appeal with costs and confirmed the order of the regional court.

Before the SCA, the issues were narrowed down to one crisp issue: whether the appellant, knowing the purpose for which the property was to be used, and having knowledge of the latent defect in the property (the leaking roof), fraudulently failed to disclose same to the respondents before the sale with the aim to induce the sale.

The SCA found that there was no reason to interfere with the factual findings of the trial court. On the contrary, they were fully justified by the record. The SCA showed the proven facts from which the high court and the regional court drew their inferences, to conclude that the respondents had objectively proven the causal link between the false representations and non-disclosures and the conclusion of the sale. These facts and inferences included the following. First, the engineer's report (drawn up by Mr Rosslee) revealed extensive and long-standing defects in the roof which contradicted the appellant's claim that he was not aware of the seriousness of the leakage problems. Second, the roof could not possibly have

deteriorated from the repair of the roof claimed by the appellant to its leaking condition barely three months later, when all the rooms leaked. Third, the evidence of the appellant was irreconcilable with Mr Rosslee's evidence that there were numerous places where rainwater directly leaked through the ceiling because of longstanding defects in the roof construction. Fourth, the appellant admitted to the presence of a water damp spot on the ceiling of bedroom 7, yet used plastic sheeting/membrane much larger than this area to address it. It was reasonable to draw an inference from this that the appellant had knowledge of far more extensive water leakage than what he admitted. Fifth, Mr Rosslee's expert evidence that the leakage problems of the roof were so stark that if anyone claimed that there had been no problem of leaking before the respondents complained, they were being untruthful. And importantly, sixth, the recent/fresh crack which Mr Rosslee found when he did his investigation shortly after the rains, was telling. Notably, the appellant led no evidence to rebut the evidence of Mr Rosslee.

The SCA thus found that, on the established evidence, the appellant fraudulently misrepresented the true condition of the roof and failed to disclose this to the respondents, as that would have clearly played a crucial role in the respondents' decision of whether to acquire the property or not. Further, that, on the probabilities, the only reasonable inference to be drawn, as correctly concluded by both the high court and the regional court, was that the non-disclosures and misrepresentation were made deliberately in order to induce the sale of the guesthouse, and this constituted fraud. The SCA therefore held that the high court's dismissal of the appeal could not be faulted.

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