



## 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:** 8 April 2022

**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*

*Susara Magrietha Strohmenger v Schalk Willem Victor and Another* (Case no 1133/20) [2022]  
ZASCA 45

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Today the Supreme Court of Appeal (SCA) upheld an appeal of the Northern Cape Division of the High Court, Kimberley (high court) and replaced the order with one that dismissed the appeal.

The applicant applied for special leave to the SCA in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013. This Court referred the application for oral argument and directed the parties to be prepared, if called upon to do so, to address this Court on the merits. The applicant contended that special circumstances existed which warranted this Court to grant the special leave to appeal.

The first respondent, the plaintiff in the high court, issued summons against the applicant, claiming restitution of performance pursuant to an alleged invalid agreement concerning the alienation of land. The restitution sought revolved around certain specified properties to be retransferred into the name of the first respondent, or alternatively, the value of the property in question in addition to compensation for another property, which had in the meantime been sold in terms of an alleged illegal oral agreement. The applicant, in turn, raised a special plea of prescription and averred that summons had been issued three years after the debt had fallen due. The substance of the plea was that the applicant denied the oral agreement, as alleged by the first respondent and explained that the first respondent bought the immovable property, and registered it in her name, as a token of his love and affection for her and to comply with a maintenance obligation he had assumed and undertook to fulfil towards her.

The high court dismissed the first respondent's claim as well as the applicant's special plea. Aggrieved by this, the first respondent appealed to the full court of the high court, which upheld the appeal and set aside the high court's order. The first respondent pleaded that the applicant repudiated their former agreement. Furthermore, the full court precluded the applicant from relying on the special plea of prescription and found that having pleaded donation, the applicant was obliged to plead whether such a donation was oral or in writing. If it had been a written donation, she could not have closed her case as it would have been incumbent on her to have led evidence to show how s 28(2) of the Alienation of Land Act 68 of 1981 applied.

On appeal, the SCA found that the first respondent's allegations did not bear scrutiny. The first respondent could have paid the purchase price on behalf of the applicant pursuant to an oral agreement, but such an agreement was not one legally required. If it had been a legal requirement, the underlying

agreement in terms of which the immovable property was transferred should have been in writing. The agreement in question did not fall within this parameter.

The SCA held that the property was validly transferred to the applicant. The first respondent argued that performance took place as a result of an illegal contract as the agreement must have been in writing, otherwise it was unlawful and void, however the SCA concluded that reliance on such an argument was misconstrued and was related to property unrelated to the matter at hand.

Accordingly, the SCA found that the full court erred when it ordered the transfer of property which had been validly transferred and registered, pursuant to a valid deed of alienation to which the first respondent was not a party. The SCA was satisfied that special circumstances existed warranting special leave to appeal and accordingly upheld the appeal. The SCA set aside the order of the high court, and dismissed the appeal.

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