



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: 12 November 2024

Status: Immediate

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Robert Paul Serné N O and Others v Mzamomhle Educare and Others (588/2023) [2024] ZASCA 152 (12 November 2024)

Today the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

In 2006, the first appellant, Robert Paul Serné and others who were on a ‘Habitat for Humanity’ tour to South Africa, met Ms Margaret Noxolo Ngaleka (Ms Ngaleka), who was then running an unregistered day-care centre. At her request, they initially assisted by fixing a leaking roof and in 2008, purchased containers to which the centre was relocated. The non-profit Mzamomhle Foundation Trust (the Trust), which was founded to alleviate poverty, was registered in 2010. Ms Ngaleka received an offer from the City of Cape Town (the City) in 2011 to purchase the vacant land (the property), where the containers were located. She sought the assistance of the Trust, which funded the R33,000 purchase price which she was unable to pay. The property was subsequently transferred into the name of the Mzamomhle Educare (first respondent). Due to funding constraints, the first respondent represented by Ms Ngaleka agreed to donate the property to the Trust in order to facilitate the building of an Early Childhood Development Centre (ECDC), at a cost in excess of R2 million. The Trust then concluded a lease agreement with the first respondent, which, absent any further renewal, was to endure for a period of five years and terminate on 31 August 2017. The property was transferred and registered into the name of the Trust in 2016.

Upon the death of Ms Ngaleka in 2016, Bongeka Mqolombeni (second respondent) and Siphokazi Mqolombeni (third respondent), being respectively, the daughter and granddaughter of Ms Ngaleka, took over the property, which they claimed to have inherited from her. The first respondent fell into arrears in respect of the rental due and also failed to pay the municipal rates and other charges timeously. In November 2017, the parties agreed in writing that the respondents would pay the arrear rental as well as the rental for the period November 2017 to April 2018. The respondents failed to honour the agreement, which lapsed in May 2018. As a result, in November 2018, the appellants’ served a notice to vacate on the second and third respondents, which went unanswered. An application was thereafter issued by the appellants, the Trustees of the Trust, in February 2019.

The application, which was a fairly simple and straightforward one, rested on the *rei vindicatio*, was opposed. The second respondent whilst acknowledging that the property had indeed been transferred

into the name of the Trust, disputed that the Trust had lawfully acquired ownership of the property and further denied the validity of the lease that had been entered into between the Trust and the first respondent. She alleged further that no valid lease could have come into existence and it could therefore not have expired by effluxion of time. In November 2019 the Judge President of the high court issued a directive, directing amongst others that the matter be heard by two judges and ultimately caused the application to be heard and considered in terms that would ordinarily be relevant to an application under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE).

In addressing whether the high court correctly adjudicated the matter in terms of the practice directive issued by the Judge President, the SCA held that it was for the parties to set out and define the nature of their dispute and for the high court to have adjudicated that dispute and that dispute alone. The practice directive reached beyond the issues identified by the parties and in several fundamental respects, rested on a misconception of the essential nature of the application and the relief that was sought. The SCA held further that as a result of the practice directive, the high court considered factors that would ordinarily be relevant to an application under PIE, however in view of the fact that the property was not residential property, PIE did not find application. As a result, the high court was not enjoined to consider the issues of fairness and equity, as is required in terms of s 4(7) of PIE.

The SCA held further that The Trust, which based its application on the *rei vindicatio* was required to do no more than allege and prove that: it is the owner of the property; the property is in the possession of the respondents; and, the property is still in existence. The SCA held further that the onus was on the respondents to allege and establish any right to continue to withhold possession from the owner. In the absence of a successful challenge to the manner in which the Trust obtained ownership of the property, the registration of the property by Registrar of Deeds remained valid until set aside by an order of court. The SCA held further that the right to hold the property as against the owner derived solely from the lease agreement, however, the lease agreement terminated by the effluxion of time and had not been renewed and therefore found that there was no lawful basis for the continued withholding of possession from the owner of the property.

As a result, the appeal was upheld with costs, and the order of the high court was set aside and replaced.

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