



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
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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.

Osman v Kariem (339/2024) [2025] ZASCA 139 (29 September 2025)

Today the Supreme Court of Appeal (SCA) dismissed, with costs, an appeal against the judgment of a full bench of the Western Cape Division of the High Court, Cape Town (Gamble, Dolamo and Nuku JJ sitting as court of appeal).

The parties, Ms Kariem and Mr Osman, were married by Muslim rites in 2009 and jointly purchased a property in 2015. Part of the purchase price was secured by a bond over the property in favour of Standard Bank. They lived together on the property. During 2017, Mr Osman experienced financial difficulties, prompting his creditors to threaten to attach his half-share in the property. The parties explored several options to prevent this. Ultimately, they agreed that Mr Osman's half-share would be sold and transferred to Ms Kariem. They signed a Deed of Sale recording that Ms Kariem had paid Mr Osman R1,200,000 as the purchase price for his half-share of the property. Although no purchase price was ever in fact paid, Mr Osman's half-share was transferred and registered in Ms Kariem's name in 2019, making her the registered sole owner of the property. Mr Osman contented that the parties had an oral agreement that '[they] would put the house into [Ms Kariem's] name temporarily, until [his] stuff was sorted out'. The parties separated in July 2019. In November 2019 Ms Kariem vacated the property, leaving Mr Osman behind. They dissolved their marriage in March 2020. Thereafter, Ms Kariem brought an application in the Western Cape Division of the High Court, Cape Town (the high court) in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act for Mr Osman's eviction from the property. She based the application on her sole ownership of the property. In the high court the eviction case was referred for oral evidence, ostensibly to establish whether Mr Osman was a joint owner. After hearing oral evidence, the

high court dismissed the eviction application but did not decide whether Mr Osman was a joint owner of the property. On appeal to a full bench of the high court (the full court), the high court's order was set aside. The central issue for determination by the SCA was whether Mr Osman had established that he was the co-owner of the property with Ms Kariem. Related to this question was whether the Deed of Sale reflected the true intention of the parties and what evidence could be accepted in answering this question.

The SCA held that the question whether Mr Osman was the co-owner of the property was a question of law and no amount of evidence could resolve that issue based on the allegations made in the affidavits. This question of law was determined by the SCA with reference to firstly, the principles regulating non-variation clauses, secondly, the parole evidence rule; thirdly, the abstract theory of ownership; and fourthly, the Alienation of Land Act.

The SCA emphasised that the Deed of Sale contained a non-variation clause to the effect that any variation thereof 'shall be of no force and effect, unless in writing and signed by the parties or their representatives'. Relying on the statement in *Shifren* that any purported variation of the terms of a written contract that does not comply with the formalities prescribed in a non-variation clause, will be void, the SCA found that Mr Osman's argument amounted to an impermissible oral variation to Deed of Sale.

The SCA confirmed the existence of the parole evidence or integration rule in our law despite its curtailment in recent times. In terms of this rule, the SCA held, Mr Osman was precluded from adducing any extrinsic evidence to redefine, add to or modify the terms of the written agreement.

The SCA further confirmed the abstract theory of ownership adopted by South African property law. In terms of this theory ownership depends on a real agreement and a formal act of transfer, such as registration in the Deeds Registry. If these two elements are satisfied, ownership would vest in the transferee even though the underlying agreement (the Deed of Sale) may be defective. In terms of the abstract theory of ownership, the SCA held, full ownership of the property vested in Ms Kariem.

The SCA referred to s 2(1) of the Alienation of Land Act, which requires that all agreements to sell, exchange or donate land must be in writing and signed by both the seller and purchaser. Because Mr Osman's contention that he had a right to demand transfer of his half share in the property was based on an oral agreement that was not in writing, the SCA held that it was of no force or effect. In addition, the SCA held, that the oral agreement was also fatally vague and lacking in the requisite essentialia that would render it enforceable.

For the above reasons, the SCA held that Mr Osman had not established that he was the co-owner of the property with Ms Kariem.

As a result, the SCA dismissed the appeal with costs.