



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: 7 October 2025

Status: Immediate

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Motsima and Another v Kopa and Others (Case no: 1316/23) [2025] ZASCA 144 (7 October 2025)

Today the Supreme Court of Appeal (SCA) handed down a judgment in an appeal against an order by a full court of the Free State Division of the High Court, Bloemfontein, (the Full Court). The appeal was dismissed with costs.

The case arises from the following facts. In 2010, Mr and Mrs Motsima (the appellants) acquired vacant land in Woodland Hills Wildlife Estate, Bloemfontein, and built a house on it (the property), using mortgage finance from a bank. Mr Motsima lost his job and to avoid foreclosure by the bank, they sold the property to the third respondent, C&D Investment Trust (C&D Trust), for R1 575 000. The appellants concluded a lease agreement with C&D Trust which included an option to repurchase the property for R1 830 000. Unable to exercise the option, in July 2018 the appellants concluded an oral agreement with the first and second respondents, Mr and Mrs Kopa (the Kopas). In terms of that agreement, the Kopas would buy the property from C&D Trust, rent it to the appellants and grant them an option to buy it back at the same price that the Kopas paid to C&D Trust, plus interest and the expenses incurred by the Kopas in registering the property into their names. The appellants and the Kopas would conclude a rental agreement in which the latter would grant them an option to buy back the property. In 2018 the Kopas purchased the property from C&D Trust for R1 830 000.

A dispute arose when the appellants refused to sign a lease agreement to rent the property from the Kopas for R20 000 per month. The Kopas subsequently sold the property to the fifth respondent, the Van Der Merwe Family Trust (the VDM Trust) for R2.5 million.

In May 2019, the appellants instituted an action in the Free State High Court for an order declaring both agreements unlawful and void, because they were simulated transactions (the action). The appellants alleged that neither C&D Trust nor the Kopas had any intention of owning the property. When the appellants became aware that the property had been sold to the VDM Trust, they obtained an urgent interdict on 4 July 2019 preventing its transfer to the VDM Trust.

On 8 February 2021 the High Court dismissed the action. On 15 July 2021 that court granted the appellants leave to appeal. In the meantime, the property was transferred to the VDM Trust on 7 May 2021. The appellants applied for a second interdict on 16 July 2021 to prevent the VDM Trust from selling the property, which was dismissed with costs. On 8 November 2021 the appellants filed the appeal record but took no steps to prosecute the appeal. On 15 July 2022, the Registrar notified the parties that the file would be archived if no response was received within five days. The appellants did not respond to this letter. On 14 November 2022, the respondents informed the appellants that the appeal had lapsed. The appellants responded on 7 December 2022 that they would apply for condonation but only filed that application on 11 May 2023.

The Full Court dismissed the application for condonation and reinstatement of the appeal. The issue before the SCA was whether the Full Court was correct. When the appeal was heard, the VDM Trust had sold the property to a bona fide third party.

The SCA held that the appellants had not fully explained the delay, neither did their explanation cover the full period of the delay. There was no explanation why the application for condonation and the reinstatement of the appeal was brought only on 11 May 2023. Apart from this, the Kopas were entitled to closure of the litigation. The SCA reiterated that the principle of finality in litigation is intended to allow parties to get on with their lives. The Kopas were entitled to assume that given the inordinate delay, the appellants did not intend to prosecute the appeal. The SCA concluded that the principle of finality would be undermined if condonation were granted for the excessive delay, without explanation. Regarding prospects of success, the SCA held that the two agreements were a matter of history and the relief sought (the transfer of the property to the appellants) could not be granted. The VDM agreement had not been challenged, and the property had been transferred to a bona fide third party whose ownership had also not been challenged. The SCA concluded the appellants' prospects of success were remote, if not non-existent. For all these reasons, the SCA held that it was not in the interests of justice to grant condonation. Consequently, the appeal was dismissed with costs.

In a second judgment, Modiba AJA concluded that the appeal should be dismissed for the sole reason that it was moot in terms of s 16(2)(b) of the Superior Courts Act 10 of 2013. Modiba AJA found that when the appellants applied for condonation in May 2023, events had occurred indicating their intention not to prosecute the appeal and their awareness that it would not have practical effect. The Motsimas were aware from November 2018 that the Kopas intended to on-sell the property, as evidenced by email correspondence. Their failure to enrol the appeal was illogical given they had pursued the second interdict concurrently with prosecuting the appeal. With the property transferred to a third-party purchaser, unscrambling the impugned agreements would have no practical effect as the Kopas could no longer restore ownership to the Motsimas. There is no discrete legal issue of public importance that warrants the exercise of the Court's discretion to consider it despite the mootness of the appeal. Modiba AJA held that even if the appellants amended their pleadings, they would do so only to cure mootness. Further, they would need the Court's leave requiring a reasonable explanation for the delay in amending their pleadings, which was not apparent from the record.

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