



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: 31 March 2025

Status: Immediate

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Obiang v Janse van Rensburg & Others (714/2023) [2025] ZASCA 30 (31 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed with costs, the appellant's appeal against an order of the Western Cape Division of the High Court.

This appeal concerned the question of whether it is legally permissible to serve legal process intended for an unrepresented foreign litigant, on an address appointed by a former attorney, after its mandate to act for the litigant in the proceedings had been terminated.

The appellant, Mr Teodorin Nguema Obiang, is the President of the Republic of Equatorial Guinea. The first respondent, Mr Daniel Welman Janse van Rensburg (the first respondent) was detained for 423 days at Black Beach Prison in Malabo, Equatorial Guinea. The first respondent instituted a claim for damages against the appellant for wrongful arrest and detention in the Western Cape Division of the High Court, Cape Town (the high court).

The appellant terminated the services of his attorneys, Abraham and Gross Inc (A&G). A&G subsequently filed notices of withdrawal as attorneys of record, in the matters in which it represented the appellant. A&G recorded in the notices of withdrawal that the appellant was reachable through Mrs Maria Del Pilar Salsona Hombria (Ms Hombria) Second Secretary, Embassy of Equatorial Guinea (the Embassy), 48 Florence Street, Colbyn, Pretoria.

The first respondent launched an application to strike out the appellant's defences due to his failure to deliver a discovery affidavit in the main action. The Sheriff, Cape Town West served the application to strike out and the notice of set down on Ms Hombria at the Embassy. The appellant did not oppose the application to strike out his defence and as a result Dolamo J struck out the appellant's defence ('the Dolamo order').

The first respondent continued prosecuting his claim against the appellant and the first respondent's attorney, Fairbridges Wertheim Becker Attorneys (FWB) served, *inter alia*, the notice of set down. The appellant was notified that the main action is set down for trial on 8 March 2021.

The trial came before Lekhuleni AJ on 8 March 2021 and on 18 June 2021, Lekhuleni AJ granted default judgment against the appellant and awarded damages to the respondent ('Lekhuleni order'). Subsequently, a writ of execution was issued against the appellant's moveable assets. Within twenty-four hours of the service of the writ on his house in Clifton, the appellant instructed Victor Nkhwashu Attorneys (VNA) to bring an application to suspend the operation of the Lekhuleni order and rescind both that order and the Dolamo order. The parties agreed to an order that the Lekhuleni order be suspended pending the outcome of the two rescission applications. The rescission application came before Slingers J in the high court and the application was dismissed. Slingers J granted the appellant leave to appeal to the full court. In a majority judgment written by Wille J with Le Grange J concurring, the full court dismissed the appeal.

This court, per Kathree-Setiloane JA, held that where a litigant terminates his or her attorney's mandate the attorney is not obliged to provide the registrar and the parties with a new address for service; that obligation falls upon the formerly represented party in terms of rule 16(2) of the Uniform Rules of Court (the rules). In this matter, the appellant confirmed that A&G filed the notices of withdrawal, and that rule 16(2) was brought to his attention. The SCA thus held that: (a) the appellant was fully aware that the Embassy was the address appointed in the notices of withdrawal, and yet did nothing to correct this, despite having the obligation to do so; (b) Having failed to deliver a rule 16(2) notice appointing an address for service, it was untenable for the appellant to argue that service on the Embassy was invalid, as his former attorney had no authority to designate the Embassy as the address for service; and (c) the

appellant's termination of his former attorneys mandate to act for him, did not negate service of legal process, intended for him, on the designated address, provided it came to his attention. The SCA further found that there was no evidence, on the appellant's papers, that sheds light on why the legal process delivered at the Embassy was not channelled to the appellant in Malabo. The appellant also failed to explain how Ms Hombria and Mr Medja formed part of the channel that were to bring the writ of execution to his attention within twenty-four hours, yet, on his version, were incapable of conveying a single item of the various court documents, served on the Embassy and emailed to them, to the appellant's notice.

Ultimately, the SCA found that the full court did not err in dismissing the appeal against the order of Slingers J which dismissed the rescission application. It held that on the first respondent's version, that the appellant received all legal process served on the Embassy through essentially the same channels that the writ of execution came to his attention. He understood fully well that the litigation would have proceeded after he terminated the mandate of A&G to act for him, yet he did not deliver a rule 16(2)(b) notice appointing an address for service on him. In those circumstances, this Court concluded that the Dolamo J and the Lekhuleni AJ orders were not made in the appellant's absence. He was, thus, not entitled to an order rescinding them in terms of rule 42(1) of the rules.

The appeal was, therefore, dismissed with costs, including those of two counsel where so employed.

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