



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Jacobs v Baumann NO (126/2008) [2009] 43 ZASCA (8 May 2009)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed an appeal against the judgment of the Cape Provincial Division (Bozalek J) which upheld the application of the respondents, who are Swiss nationals, for the substitution of Mr Baumann as their representative (a Swiss equivalent of an executor of a deceased estate) as the heirs of a deceased estate in Switzerland and the joinder of Mr David Spycher, a co-heir in the estate, as one of the plaintiffs in their pending action against the appellants for the repayment of a loan granted to the first appellant by their deceased benefactor during his lifetime.

The only issue persisted with on appeal was Baumann's substitution which the appellants challenged on the basis that the summons commencing the action was a nullity because the administrator of the deceased estate sought to be replaced with Baumann, Mr Wirz, in whose name the summons was issued on behalf of the deceased estate, had been irregularly appointed by the relevant Swiss court and that the consequence of Baumann's substitution would be a resuscitation of the summons as he would become plaintiff *nunc*

pro tunc, thus depriving them of an opportunity to raise prescription, to their prejudice. The SCA rejected these contentions holding that the procedural flaw in Wirz's appointment – it was made without notice to the first appellant who is a co-heir in the deceased estate – did not render it unlawful and that it remained valid until it was properly set aside. The SCA held further that any steps taken by Wirz, including the issue of the disputed summons, on the authority of the court order appointing him before it was reversed were lawful and that the summons was thus not a nullity. The effect of the substitution could not therefore prejudice the appellants as its effect was not to introduce a new party, as contended, but merely to replace an irregularly appointed executor with the proper one.
