



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: May 2009
Status: Immediate

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

JACOBUS DAWID GROBLER

APPELLANT

and

CECILIA JOHANNA OOSTHUIZEN

RESPONDENT

On ... May 2009 the SCA upheld an appeal by Mr Grobler against a judgment in favour of Mrs Oosthuizen by the full bench of the Kimberley High Court.

The matter arose from an agreement of sale between Mr Grobler and a company, Mothibi Crushers, on 14 August 1991. In terms of the agreement Grobler purchased an immovable property from the company. In entering into the sale agreement, the company was represented by Mrs Oosthuizen's husband, as its only shareholder and director, who has since passed away and to whom reference is made as 'the deceased'.

In terms of the sale agreement Grobler ceded three Sanlam policies to the deceased as security for payment of the purchase price. The property was never transferred to Grobler and the sale agreement in fact proved to be void from the start. After the death of the deceased the policies were ceded to Mrs Oosthuizen as his only heir. She then claimed and received the surrender value of the policies in an amount of R741 677.24 from Sanlam on 17 September 1997. Grobler's claim under consideration was for payment of this amount for which he issued summons on 9 June 2000.

Mrs Oosthuizen raised the defence of prescription on essentially the following grounds:

- The underlying basis for Grobler's claim, she said, is for re-cession of the policies which were ceded to the deceased in compliance with an agreement of sale which proved to be null and void.
- This claim, she said, 'became due' as envisaged by s 12 of the Prescription Act 68 of 1969 when the cessions occurred, because a claim for restoration of performance under a void agreement arises at the time when that performance is rendered.
- Seeing that the period of prescription provided for in s 11(d) of the Prescription Act is three years, she said, Grobler's claim became prescribed in August 1994 which is long before the death of the deceased in 1997.
- As a matter of law, so Oosthuizen's contentions concluded, a claim which became prescribed against a deceased cannot be enforced against an heir, which is the ultimate basis of Grobler's claim.

In the trial court, Oosthuizen's defence of prescription was dismissed with costs. On appeal to the full bench, that decision was, however, reversed and the plea of prescription upheld.

On a further appeal the SCA found that, properly analysed, Grobler's case, was not based on a claim for re-cession of the Sanlam policies. When the agreement of sale proved to be invalid, so the court held, the policies automatically reverted to Grobler. When Mrs Oosthuizen thereafter collected the proceeds of the policies from Sanlam, she therefore effectively did so for Grobler's account. Thus understood, Grobler's

claim against her for payment of the money she received for his account, arose when she collected the money from Sanlam on 17 September 1997. Since this was less than three years before summons was issued in June 2000, the claim for prescription could not succeed.