

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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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

The Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele (102/09 and 499/09) [2010] ZASCA 28 (25 March 2010)

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellants, a group of people who occupy property situated at 11 Hendon Road, Yeoville in central Johannesburg (the property). There were two appeals before the court. One was directed against an order of eviction that was granted by default against the appellants and the other relates to the dismissal of an application for rescission of the order of eviction. Both Satchwell J (who granted the eviction order) and Tsoka J (who refused the rescission application) granted the appellants leave to appeal to the SCA.

On 30 October 2007, the respondent gave the appellants notice of termination of their respective leases and they were given three months, until 31 January 2008, to vacate the property. None of the appellants vacated the property by the due date. During April 2008, the respondent instituted eviction proceedings against the appellants in the South Gauteng High Court (Johannesburg). The appellants failed to oppose those proceedings and on 18 June 2008, the high court granted the eviction order in terms of which the appellants were directed to vacate the property.

The court found that the appellants did take steps to secure legal assistance in opposing the eviction application and that it had always been their intention to oppose the matter. They failed to appear in court because they bona fide, but mistakenly believed that they would be represented. The court concluded that the explanation for their non-appearance was reasonable and that they were not in wilful default.

The court found that the high court had, in granting the eviction order, failed to properly discharge its statutory obligations. It found that the court was not in a position to have regard to all relevant circumstances as the necessary information was not placed before it. The high court failed to comply with the mandatory provisions of s 4 of PIE.

The court further found that although the information which had been placed before the high court was insufficient to enable it to discharge its statutory obligations, the scant information which had been made available should have alerted the court to the fact that the occupiers of the property were poor and that the prospect of homelessness, if they were to be evicted, was very real. The high court ought to have been proactive and should have taken steps to ensure that it was appraised of all relevant information in order to enable it to make a just and equitable decision. The high court, in these circumstances, also failed to comply with its constitutional obligations.

The SCA held that the appellants had shown good cause for a rescission order under the common law. For these reasons the rescission appeal was upheld with costs.

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