



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
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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.

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J M and N F NKENGANA v S vd W SCHNETLER – Case No 65/09

The Supreme Court of Appeal today upheld an appeal by Mr and Mrs Nkengana (the appellants) against a decision of the full court of the Eastern Cape High Court, Grahamstown. The appellants launched an application arising from a deed of sale entered into between them and Mr S vd W Schnetler (the respondent) during December 2000 in respect of a property situated in Uitenhage. In terms of the agreement, the purchase price of R260 000 was to be paid in four monthly instalments of R50 000 each, with a final instalment of R60 000. However, the appellants were not in a position to make payment of the instalments as stipulated in the agreement. The parties thereupon orally agreed that, instead of paying the purchase price by way of the instalments and on the dates as originally agreed, the appellants would pay the respondent's monthly bond instalments to Standard Bank until they

were able to pay the full purchase price.

Approximately six years later the appellants claimed to have paid a total amount of some R238 054.83 towards the purchase price and accordingly claimed transfer against payment of the outstanding balance of R21 945.17. There was a dispute between the parties as to the exact amount paid by the appellants. There was also a dispute as to the terms of the oral agreement, the respondent contending that the parties agreed that the payment of bond instalments would be regarded as occupational rent. In reply, the appellants denied that the instalments were to be regarded as occupational rent. They also increased their original tender by offering to pay an additional amount of R67 860 plus the outstanding balance in respect of the bond, which amounted to R180 282.72 at that stage.

The trial court and the full court accepted the respondent's version of the oral agreement and held that it was valid, being a separate agreement in respect of occupational rent.

On appeal, the SCA held that it was unnecessary to decide whether or not the oral agreement was valid, as the final tender made by the appellants was sufficient to entitle them to claim transfer of the property. The court accordingly upheld the appeal with costs and ordered the respondent to take the necessary steps to transfer the property to the appellants against payment of the amounts tendered.

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