

# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## PRESS RELEASE

1 December 2010

STATUS: Immediate

*Kuzwayo v Esate Late Masilela (27/10) [2010] ZASCA 167 (1 December 2010)*

*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 an order of the South Gauteng High Court that the Registrar of Deeds, Johannesburg cancel a deed of transfer to Mrs Kuzwayo in respect of a site in Vosloorus, Gauteng.

The Estate of the late Mr Masilela applied for an order that the deed be cancelled and that ownership of the site be transferred to it. The Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 provides that a site permit in a formal township may be converted into ownership after an investigation has been carried out by the Director-General, Housing: after ascertaining who the site-holder and occupier is, he must declare that that person is the owner, and transfer will be effected to the latter.

In this case a delegate of the Director-General had declared that Kuzwayo was the owner and had transferred the property to her. But this was an error. Although Kuzwayo had applied for a site some 20 years before the transfer was effected, she had not paid for it and had relinquished it in 1987. Mr Masilela had been allocated the site in 1987, and had built a house on it. He had paid for the site, had paid for municipal services and had lived in the house with his family. After his death his family had continued to occupy the property and pay for all the services.

When they discovered that the property had been transferred to Kuzwayo the Estate brought an application for the cancellation of the transfer and for transfer to the estate. Kuzwayo, in a remarkably opportunistic fashion, opposed the application, alleging in the face of all the evidence of the Estate's right in the property, that she had always intended to assert her rights in it. She proved no right but raised numerous legal defences. However, the high court ordered the Registrar of Deeds to cancel the transfer to Kuzwayo and also ordered the Gauteng Provincial Government to transfer the property to the estate.

On appeal the SCA held that the estate was entitled to the property. But as no inquiry appeared to have been conducted in terms of the Conversion Act, it ordered that one be conducted and that the Director-General declare that the holder of the site permit be declared the owner of it.

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