



THE 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
DATE 28 March 2012
STATUS Immediate

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

Prinsloo NO v Goldex 15 (243/2011) [2012] ZASCA 28 (28 March 2012)

The Supreme Court of Appeal (SCA) upheld an appeal against an order made by the North Gauteng High Court, Pretoria. The proceedings which gave rise to this appeal was preceded by an urgent application, by way of motion proceedings, by the appellants for an order compelling the respondents to take transfer of the property against payment of the agreed purchase price. Webster J dismissed that application and found that the third appellant was guilty of having made a material fraudulent misrepresentation to the respondents, that no valid land claim had been made or was pending in relation to the property.

The respondents then instituted action against the appellants in the court a quo for damages allegedly resulting from the same fraudulent misrepresentation. The appellants denied the allegations of fraud on which the respondents rested their claim. The respondents thereupon raised a plea that the appellants were estopped from denying these allegations by the *exceptio rei iudicata*, as this issue had already been decided by Webster J. Pretorius J upheld the plea of *res iudicata* with costs. The appellant appealed against this decision to the SCA

The SCA found that, in the proceedings before Webster J, the allegations of fraud against the appellants were not properly investigated. Consequently, his finding of fraud on the papers alone was clearly inappropriate. But, because of the rules pertaining to motion proceedings, he happened to be right in dismissing the application before him. Therefore the SCA held that it would be patently inequitable and unfair to hold the appellants bound to those inappropriate findings in the present proceedings.

For these reasons the SCA made the following order:

- (a) The appeal is upheld with costs
- (b) The order of the court a quo is set aside and replaced with the following:

'The defendants' plea of *res iudicata* in the form of issue estoppel is dismissed with costs.'