



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.

RINALDO INVESTMENTS (PTY) LTD v GIANT CONCERTS CC

The Supreme Court of Appeal (SCA) today held that Giant Concerts CC had no legal standing to challenge the decision of the eThekweni Municipality to sell land by private bargain to Rinaldo Investments (Pty) Ltd, and the related decision of the MEC for Local Government, Housing and Traditional Affairs to approve the sale: as it was not a ratepayer in Durban or a member of the local community, it had no interest in the validity of the sale. The SCA upheld an appeal against an order of the KwaZulu-Natal High Court, Pietermaritzburg reviewing and setting aside the decisions of the municipality and the MEC.

The municipality had advertised its proposed sale of the land in terms of section 234(1) of the Local Authorities Ordinance 25 of 1974 (KZN), the parties signed the contract and it lay for inspection as required by section 234(3) of the Ordinance. In terms of section 234(1) objections could be made to the sale of the land. Giant Concerts, which had its registered

address in Pietermaritzburg and was not a ratepayer in Durban, objected to the sale of the land to Rinaldo Investments for the development of a movie studio and other allied facilities. Despite the objection, the municipality approved the sale to Rinaldo Investments and referred the sale to the MEC in terms of section 235(1) for approval. The MEC approved the sale. Giant Concerts successfully applied to the high court to review and set aside the decisions of the municipality and the MEC. Rinaldo then appealed to the SCA against the order of the high court.

Before the SCA the issue was whether Giant Concerts had legal standing to challenge the decision of the municipality, and the related decision of the MEC. The SCA stated that in order to answer the question as to who has standing to object, in terms of section 234(1), it was necessary to determine the prior issue of whose interests sections 233, 234 and 235 of the Ordinance (which empower municipalities in the province of KwaZulu-Natal to alienate their immovable property and regulate how such alienations are to take place) are designed to protect. It then held, with reference to section 233(8) of the Ordinance, that those who have an interest in 'the interests of the borough' constitute the class of persons who may object to a sale by private bargain. Giant Concerts did not fall into this class. The SCA stated that the advertisement in accordance with section 234(1) is not an invitation to the world at large to object to a proposed sale of immovable property, but for members of the local community, so that they are informed of proposed action by their local government that may have a detrimental impact on the interests of the municipality – and by necessary implication on their interests. Consequently, it held that Giant Concerts lacked standing to challenge the validity of the sale of the land by the municipality to Rinaldo Investments. The SCA stressed that its finding did not mean that if the sale was tainted by unlawfulness, procedural unfairness or unreasonableness, the municipality was above the law and its wrong was unreviewable: its finding was simply that, in this case, Giant Concerts was not the right party to challenge the decisions.