



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
Date: 28 March 2012
Status: Immediate

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.

GERT THOMAS VAN DER MERWE v SIMON MOLEFE PITJE

The Supreme Court of Appeal (SCA) today upheld an appeal against an order of the North Gauteng High Court, Pretoria (Makgoka J) suspending an earlier order made by Potterill AJ authorising the eviction of the respondents from the appellants' property, and directing the appellants to immediately return the property to the respondents. The SCA declared that the order by Potterill AJ was of full force and effect and had not been superseded by any further orders.

The appellants had sought, and obtained, an eviction order against the respondents after they had failed to vacate certain fixed property which the appellants had bought at a public auction. The property had been registered in the name of the respondents but was sold by public auction subsequent to the mortgagor foreclosing. The respondents then lodged an application for leave to appeal against the eviction order, and the appellants lodged a counter-application for leave to execute on the eviction order. On the day of hearing the

respondents' application for leave to appeal was removed from the roll, while Potterill AJ granted the appellants leave to execute on the eviction order. The application for leave to appeal against the eviction order was later dismissed and the further applications for leave to appeal to the SCA and the Constitutional Court were likewise dismissed.

The respondents subsequently launched two applications on an urgent basis in which they sought rescission of the execution order (rescission application) and an order suspending the operation of the execution order pending the finalisation of the rescission application (the suspension application), respectively. Webster J dismissed the suspension application. The rescission application was never finalised. The respondents then brought an urgent application in which they sought an order varying the order made by Webster J. The matter came before Makgoka J, who made the order referred to above. The appellants appealed to the SCA against that order.

In upholding the appeal, the SCA held that it was at large to assume that the rescission application had been abandoned and that since that is the case, and that since leave to appeal had been refused, the order appealed against, which was purely interlocutory and its life dependent on the finalisation of the rescission application, had lapsed and the execution order was no longer suspended. The appeal had therefore become academic. But to dispel any uncertainty relating to the efficacy of Potterill AJ's order, the SCA made the declaratory order referred to in the first paragraph above.