



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

MEDIA SUMMARY

27 September 2012

STATUS: Immediate

*Robert Du Plooy v Ntombi Du Plooy* (417/11) [2012] ZASCA 135 (27 September 2012)

*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 (SCA) handed down judgment today in an appeal from the KwaZulu-Natal High Court, Durban (High Court). The matter concerned the ownership of immovable property. Specifically, the SCA had to decide whether property was held in someone's personal capacity or as a nominee and whether a transferee had knowledge of a challenge to a transferor's right to alienate property.

After their parents' death the Du Plooy family continued to occupy their family home. The land upon which their house was built was to be rezoned and sold for industrial purposes. They were allocated two smaller houses, which could house the whole family, by the Marianhill Mission Institute, the owner of the land. The keys to these houses were handed over to one of the Du Plooy brothers. He passed away. According to Robert Du Plooy the houses were then allocated to him; according to his brothers and sisters, he merely received the houses as their representative. Upon Robert Du Plooy selling one of the houses, litigation ensued.

The Du Plooy family applied for an interdict in the High Court interdicting Robert Du Plooy from transferring the two properties to one Mr Zikole. In the event that the properties were already transferred, the court was asked to set the transfer aside and to

declare that Robert Du Plooy and the rest of the Du Plooy family were the co-owners of the property. The High Court granted the relief sought and leave to appeal to the SCA.

The SCA found that Robert Du Plooy, when the opportunity arose to acquire ownership of the properties or when he discerned a chance to sell them, opportunistically snatched at a bargain and betrayed the trust that had been reposed in him by his siblings. He could not have believed that he had been the owner of the properties in his personal capacity. However, the court found also that it had not been established that the Du Plooy family, including Robert Du Plooy, had received the properties in co-ownership. It found that Robert Du Plooy rather held the properties as a nominee of the family, with the terms of the nomination not including a right to dispose of the properties; he was supposed to hold the properties in the best interests of the family.

As to Mr Zikole, the court found that he was aware of the dispute regarding the ownership of the properties concerned. Indeed, the court found that he was aware of the application to be made to the High Court to interdict the transfer of the properties, but that he chose to continue with the transfer. He did so at his risk and he was not an innocent transferee. The transfer was liable to be set aside.

The court thus found some but not all the relief granted in the High Court competent. The Du Plooy family were entitled to an interdict against Robert Du Plooy and Mr Zikole stopping the transfer of the properties and setting aside the transfer. They were not, however, entitled to a declaration that they were co-owners. Accordingly, the appeal was upheld in part.