



## 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** 22 March 2013  
**STATUS** Immediate

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

*Banda & another v Van der Spuy & another*  
(781/2011) [2013] ZASCA 23 (22 March 2013)

#### **Media Statement**

A thatch roof which leaked prior to the sale of a house and which continued to leak after the sale, was held to be a latent defect which had not been properly repaired by the sellers. The sellers had fraudulently concealed the existence of this defect which vitiated the effect of a voetstoots clause in the agreement of sale. In addition, it was held that the sellers had made a fraudulent misrepresentation as to the existence of a guarantee in respect of the repairs to the roof, which induced the purchasers to buy the house, or agree upon the price. The fraud of the sellers was held to be causally related to the damage suffered by the purchasers, despite the fact that the guarantee did not cover all of the defects which caused the roof to leak and the sellers were unaware of an additional cause of the leak. The purchasers were entitled to recover the cost of replacing the roof, either on the basis of a reduction of the purchase price in this amount, or on the basis of this being the damages suffered by the purchasers as a consequence of the seller's fraud. The decision of the South Gauteng High Court that the sellers were not liable for the damages suffered was accordingly reversed.

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