



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 5 March 2015
STATUS Immediate

Deutsches Altersheim Zu Pretoria v Roland Heinrich Dohmen (34/14) [2015] ZASCA 3 (5 March 2015).

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 SCA today handed down judgment in a case concerning the eviction of an elderly man, Mr Dohmen, (the first respondent) from an Old Age Home, the Deutsches Altersheim Zu Pretoria (the appellant).

The litigation emanated from a written lease agreement concluded between the parties in March 2007 in terms of which the Old Age Home provided boarding, lodging and care in its frail care section. On 21 September 2009 the Home gave notice of termination of the lease with effect from 31 October 2009 in terms of the agreement. Despite such notice Mr Dohmen refused to vacate the Home. The Old Age Home then commenced eviction proceedings in the Pretoria Magistrates' Court and obtained an eviction court order on 18 March 2011, for Mr Dohmen to vacate the home on or before 30 April 2011. It also ordered him to pay the costs for the eviction on an attorney and own client scale. Mr Dohmen successfully appealed against the magistrates' court order to the North Gauteng High Court, Pretoria.

The Old Age Home then appealed to the SCA against the judgment of the High Court with leave granted by the former Court. The appeal was set down for hearing in the SCA on 19 February 2015. On 27 January 2015, the Respondents filed a supplementary Practice Note which revealed that Mr Dohmen had, in the interim, died on 12 January 2015. From this disclosure the Registrar of the SCA notified the appellant that it was required to indicate as a matter of urgency whether it still persisted with the appeal and if so, the parties would be required at the hearing to address whether the judgment sought will have any practical effect. In response to the registrar's notice the appellant's attorneys wrote a letter on 2 February 2015 in which they said that the judgment of the high court has

far reaching consequences, not only for the appellant, but also for other owners of similar establishments. Nevertheless, after an exchange of correspondence between the parties the appellant ultimately accepted that the appeal had no practical effect. What thereafter occupied the attention of the parties were debates about costs, with the respondents contending that the appellant must tender their costs and persisting that unless their costs were tendered, the matter must proceed before the SCA, on the other hand the appellant contended that it was through no fault of the Old Age Home that the appeal had become academic and accordingly that the correct approach should be that each party pay their own costs. Resultantly, the SCA convened on 19 February 2015 to resolve the ancillary issue of costs.

The SCA held that ordinarily where an appeal is withdrawn the appellant is liable for the costs incurred until the time of the withdrawal. The Court held that there are also cases where the SCA has made no order as to costs, but those were cases where both parties acquiesced in pursuing an incorrect procedure. On the other hand where the mootness of an appeal was successfully raised by the court itself on appeal, the usual order has been that the appellant pays the costs, particularly where the appellant persisted with the appeal despite its mootness. The SCA held that it is not deprived in moot cases of its inherent discretion, to make an order as to costs.

The SCA held that in the circumstance of the case, where the both parties chose to forego pragmatism for obdurateness, further causing considerable costs to be incurred and shared the blame for persisting with the appeal on the ancillary issue an apportionment of the costs was warranted. Consequently, the Court ordered that the appellant to pay two thirds of the respondents' costs.

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