



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 26 March 2015

STATUS Immediate

Firststrand Bank Limited v Nkata (213/2014)[2015] ZASCA 44

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

Today the Supreme Court of Appeal (SCA) upheld an appeal against the order of the high court which had re-instated a credit agreement, relying on the provisions of s 129(3) of the National Credit Act 34 of 2005 (the NCA).

The SCA, after an extensive review of the case law in South Africa and England, as to the meaning of civil execution, held that re-instatement was prohibited in terms of s 129(4) of the NCA after a sale in execution had taken place. The meaning of 'execution' had not been defined in the NCA.

Referring to the fact that execution referred to a process rather than a single event, the SCA held that, in terms of s 129(4) of the NCA, the decisive event was the sale in execution at a public auction. Contrary to the high court, the SCA found that re-instatement in terms of s 129(3) had to occur prior to the sale in execution and not prior to the transfer of immovable property, consequent upon a sale in execution.

The SCA found that this interpretation was required, inter alia, in order to ensure public confidence in auctions held in execution and that it was in the interest of both consumers and credit providers generally that this confidence be maintained in order to maximise the prices for which purchasers would bid at these auctions.