



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 30 March 2015

STATUS Immediate

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

**Thulamela Municipality & another v T Tshivhase & others
(78/2014) [2015] ZASCA 57 (30 March 2015)**

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) struck off the roll an appeal by Thulamela municipality against a judgment of the Limpopo high court which dismissed a plea by the municipality that Khosi Thove Tshivhase and his traditional council had no locus standi to bring an interlocutory application against the municipality.

In the interlocutory application Khosi Tshivhase required the municipality to produce a record of proceedings relating to the sale and transfer of certain property, in 2012, by the municipality to Valuline Pty Ltd.

In 2012, the municipality sold erven 22 and 26 Thohoyandou IA to Valuline for R519 150 each. On 11 June 2012 the two properties were transferred to Valuline together with two other properties, erven 21 and 26. .

Khosi Tshivhase and his council then brought an application in the Limpopo High Court seeking to have reviewed and set aside, the decisions by the municipality to alienate the properties.

In opposing the main application the municipality challenged Khosi Tshivhase and the council's right to launch the application. It contended that they had an obligation to prove, in the summons, that they were traditional leaders as provided for in the Traditional Leadership and Governance Framework Act

41 of 2003, as well as the Limpopo Traditional Leadership and Institutions Act 6 of 2005. The high court dismissed the challenge to Khosi Tshivhase's right.

On appeal, although not raised by any of the parties, prior to the hearing of the appeal counsel were asked to address the issue whether the order of the Limpopo high court. The municipality submitted that the order was appealable. The argument, on behalf of the municipality was based on an understanding that the order of the court a quo was a pronouncement on the rights of the respondents to institute the application and was thus finally dispositive of that issue

The SCA held that the dismissal of an exception, save an exception to jurisdiction, does not finally dispose of the issue raised by the exception and was therefore not appealable.

The court held further that the relief sought in the main application, ie the review and setting aside of the decisions to alienate the properties, if obtained would be ineffective as the properties had already been transferred to the respondent in 2012.

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