



## 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** 20 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.*

***Absa Bank Ltd v Snyman (22/2014) [2015] ZASCA 67 (20 May 2015)***

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#### **MEDIA STATEMENT**

Today the Supreme Court of Appeal (SCA) delivered a judgment upholding the appeal by the appellant and referred the matter back to the court a quo for a consideration of the issues.

The issue before the SCA was whether the sale in execution took place contrary to the provisions of s 63 of the Magistrates' Courts Act 32 of 1944.

The appellant in this appeal is Absa Bank Ltd (Absa) while the respondent is Mr J F Snyman (Snyman). The subject of their dispute concerned a house situated at 35 Watsonia Street, Panorama, Robertson in the Western Cape, with the Deeds Office

description of Erf 2866, Robertson (the property). Snyman was the owner of the property.

During 2005 Snyman caused a bond to be registered over the property in favour of Absa. In terms of the bond, Snyman acknowledged his indebtedness of R82 000 towards capital owing to Absa and R20 000 in respect of costs, as defined in the bond. Snyman then fell into arrears with his bond instalments. Despite personal service of the summons on Snyman and his wife, they entered no appearance to defend. In consequence, default judgment in accordance with the terms sought in the summons was granted by the magistrate, Mr H Folscher, on 18 December 2007. On the same day a warrant of execution was issued against the property. The warrant remained dormant until sometime in 2010. It was then reissued by the clerk of the Robertson Magistrates' Court in terms of Magistrates' Courts rule 36. The reissued warrant of execution was served on Snyman personally on 1 February 2011. As with the summons, this again elicited no response from him. In the result the property was sold in execution. When the purchaser brought an application for the eviction of Snyman from the property, the magistrate took the view that Snyman had no defence to the application. In consequence, he granted the eviction order which directed Snyman to vacate the property by 11 May 2012, failing which the sheriff was authorised to evict him on 14 May 2012. Arising from this, on 14 May 2012 Snyman brought an application in the Western Cape Division of the High Court in Cape Town for the review and setting aside of one or more of the decisions of the magistrate.

The high court held that the sale in execution was null and void by reason of the provisions of s 63 of the Magistrates' Court Act, and paragraph (ii) of its order thus set that sale aside. The result was that Snyman was held not to have been in unlawful occupation of the property and that the eviction order was bound to be set aside on that ground alone. Subsequently, Absa sought leave from the court a quo to appeal against paragraph (ii) of the order, which pertained to the validity of the execution sale.

On appeal, the SCA held that properly construed, s 63 provided that a judgment sounding in money became superannuated, unless the execution sale took place

within three years of that judgment. Hence the date on which the warrant of execution was issued, was of no consequence. It therefore went without saying that rule 36(5) could not change the meaning of s 63 of the Act.

The SCA held further that the date of reissue of a warrant under rule 36 could not avoid superannuation once the three year period from date of judgment elapsed. The court stated that an extension could only occur by order of court, which was admittedly not obtained by Absa in this case. It followed that the question of whether or not the reissue occurred on 18 December 2010 or on an earlier date, was of no consequence. What was relevant was the date of the sale in execution, which was 6 December 2011.

In consequence, the SCA found that during the course of argument it became apparent, with reference to payments that were made in settlement of the bond debt after the date of judgment that the amount for which the warrant was reissued in 2010 remained virtually the same as the amount of the original judgment debt in December 2007. Therefore it was clear that payments made in settlement after 2007 had not been taken into account. On this basis Absa fairly conceded that the appropriate order would be to refer the matter back to the court a quo with the specific direction to determine whether the sale in execution took place contrary to the provisions of s 63 of the Act.

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