



# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 01 June 2015  
**STATUS** Immediate

*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.*

### **Thom v Ba-Phalaborwa Municipality (20236/14) [2015] ZASCA 95 (01 June 2015)**

[1] The SCA today upheld the appeal by the appellant and set aside the order of the court below.

[2] The appellant who is a businessperson in Phalaborwa had obtained a mandamus against the respondent to remove a nuisance caused by the blocking and silting of a stormwater canal between the streets where it conducted its business. As the respondent had failed to comply with the court order, the appellant proceeded to do the remedial work. When the respondent tried to get to the site to undertake the work, it found that the appellant had created a fence which effectively denied it access to the site.

[3] The respondent approached the court below on notice of motion to order the appellant to remove the fence and grant it access to the site. It alleged that it had no other access point other than through the appellant's property. In its answering affidavit the appellant pertinently disputed this and in fact stated that there are other alternative access points to the site. There was thus a dispute of fact on an essential aspect of the case.

[4] However, the SCA found further that in fact the appellant had undertaken and finished the remedial work which the respondent was ordered to execute but failed to do. Accordingly the SCA found that any order would have no practical effect for the parties. It would be purely academic.

[5] The SCA invoked the provisions of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 and dismissed the appeal and made no order as to costs.