



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 11 December 2020

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.

Vukeya v Ntshane and Others (Case no 518/2019) [2020] ZASCA 167 (11
December 2020)

Today the Supreme Court of Appeal (the SCA) upheld the appeal of the appellant, Mr Mafemani Collet Vukeya, against the decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The first respondent, Mrs Shalate Nelly Ntshane, and Mr Wilson Mkhathshane Ntshane (the deceased) were married in community of property. They lived in a residential property situated in Diepkloof, Soweto (the property). The first respondent then moved to Potgietersrus, Limpopo. The deceased eventually remained behind alone on the property. The deceased became gravely sick and passed away. The first respondent was then appointed by the Master of the High Court as the executrix of the deceased estate. Then, the first respondent became aware of the sale of the property by the deceased to the appellant without her knowledge or consent as required by s 15(2)(a) of the Matrimonial Property Act 88 of 1984 (the MPA). After her appointment as executrix, the first respondent instituted proceedings against the appellant in the high court seeking to cancel the deed of transfer in respect of the property and directing the second respondent, the Registrar of Deeds, to give effect to the cancellation of the

deed of transfer. This order was granted by the high court. Leave to appeal was granted to the SCA by the high court.

The SCA held that the issue for determination was whether the appellant had brought himself within the protection afforded to third party purchasers by s 15(9)(a) of the MPA. If he had not, the sale was a nullity for want of the first respondent's consent. If he had, the first respondent was deemed to have consented to the sale and consequently the sale was valid.

Citing *Marais* and *Mulaudzi*, the SCA held that a duty was cast on a party seeking to rely on the deemed consent provision of s 15(9)(a) to make the enquiries that a reasonable person would make in the circumstances as to whether the other contracting party was married, if so, in terms of which marriage regime, whether the consent of the non-contracting spouse was required and, if so, whether it had been given.

The SCA furthermore held that in this case, there were two official documents that supported the appellant's version that he was unaware that the deceased was married to the first respondent. First, the deed of transfer referred to the appellant as unmarried. Second, the power of attorney to pass transfer with the deceased's signature appended to it described the deceased as unmarried. This all lent credence to what the appellant stated from the outset: he was not aware that the deceased was married and could not reasonably have known that he was. In these circumstances, the appellant did not know that the deceased was married and could not reasonably have known this. That being so, the 'deemed consent' provision kicked in. In the circumstances, the appeal was upheld with costs.