



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

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

From: The Registrar, Supreme Court of Appeal  
Date: 22 MAY 2008  
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*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*

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*P R CILLIE v M L GELDENHUYS*

The SCA today delivered judgment in this case, which dealt with the rights to water from a fountain on the farm Uitkomst in the Ceres district, Western Cape. The fountain is close to the border of the farm and the water has been running down naturally due to the topography to the adjoining farm, Matjiesrivier, where it had been used since time immemorial. The owner of Matjiesrivier, more than 30 years ago, opened the fountain and laid a pipe down to Matjiesrivier.

The owner of Uitkomst, in the ordinary course of his farming activities, had a borehole drilled some 200 m from the fountain. The extraction of water from the borehole affects the delivery of the fountain.

The two main issues were (a) whether Matjiesrivier had, by means of prescription, obtained a servitude over the water from the fountain and (b) if so, does that servitude prevent the owner of Uitkomst from using his borehole to the detriment of Matjiesrivier. The SCA agreed with the judgment of the Cape High Court concerning the first question (albeit on somewhat other grounds) that a servitude by prescription had been established. However, it overruled the lower court on the second question, holding that the prescriptive right did not include the right to prevent the owner of Uitkomst of using water that is flowing towards the fountain. The servitude is limited to water as it is emitted from the fountain.

The appeal was accordingly upheld and the interdict preventing the owner of Uitkomst to use his borehole was set aside.

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