

**PETER SIEGWART WALLACH V THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION) AND OTHERS**

CASE CCT 2/03

MEDIA SUMMARY

The Following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This case concerns the correct procedure in direct access or direct appeals against a decision of a High Court. The applicant, Mr. Peter Siegwart Wallach acting on his own behalf had his estate sequestered on 5 October 1990. Ten years later, on 5 October 2000, he was rehabilitated by the effluxion of time in terms of section 127A of the Insolvency Act. Prior to the sequestration of his insolvent estate, applicant was the registered owner of certain immovable property, a farm on which he now resides.

Upon his rehabilitation, the immovable property remained unrealized and was still registered in his name. No caveat had been noted against it. Subsequently however, the Master of the High Court and the former trustees of the insolvent estate caused an interdict-caveat to be noted by the Registrar of Deeds against such property, in terms of the provisions of section 18B of the Insolvency Act.

In May 2002, the applicant initiated motion proceedings in the Witwatersrand Local Division (WLD) of the High Court in which he demanded that the caveat noted against his immovable property be removed. That application was dismissed with costs.

Mr. Wallach sought to apply directly to the Court to nullify and declare invalid the judgment of the High Court. This Court found that incorrect procedure for direct access to this Court has been followed; an applicant cannot seek the nullification of a judgment and cite the court as a respondent. The correct procedure is to apply for leave to appeal against that judgment. Moreover, the issues concerned here are the interpretation and application of the Insolvency act. These are not matters for the consideration of the Constitutional Court as a court of first and last instance. The Court also found that even if the procedure in this case had been correctly followed, the trustees of the insolvent estate and the Master of the High Court were not cited as parties to the application as they had been in the High Court. Besides, they have a direct interest in the outcome of this case. For these reasons, the application for direct access, alternatively for leave to appeal directly to this Court, was denied.