



CONSTITUTIONAL COURT OF SOUTH AFRICA

Lorraine Sophie Botha and Another v Henry Robins Rich NO and Others

CCT 89/13

Date of hearing: 20 November 2013

Date of judgment: 17 April 2014

MEDIA SUMMARY

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

Today the Constitutional Court delivered a judgment upholding an appeal against a judgment and order of the Full Bench of the Northern Cape High Court, Kimberley (Full Bench).

In November 2003 Ms Botha entered into an instalment sale agreement with the trustees of the JJW Hendricks Trust (Trust) for the purchase of immovable property. After having paid more than half of the purchase price, Ms Botha began to default in her outstanding payments.

In May 2008 Ms Botha demanded transfer of the property from the Trust in terms of section 27 of the Alienation of Land Act (Act). This section gives purchasers the right to demand transfer of property into their names once they have paid more than half of the purchase price. In response, the Trust applied to the Magistrates' Court to cancel the agreement, and to evict Ms Botha from the property on the basis that she had breached the agreement by falling into arrears with her instalments as well as municipal rates, taxes and services fees. Judgment, which was subsequently abandoned by the Trust, was granted against Ms Botha.

Ms Botha again defaulted in her payments. The Trust then instituted motion proceedings in the High Court for an order cancelling the agreement alternatively declaring it cancelled. Ms Botha made a counter-application to compel the Trust to transfer the property to her. The High Court dismissed the counter-application and held in favour of the Trust.

Ms Botha subsequently lodged an application for leave to appeal directly to the Constitutional Court. The application was dismissed on the basis that it was not in the interests of justice to hear the matter at that stage. Following a successful petition, the Supreme Court of Appeal remitted the matter to the Full Bench of the High Court for determination. In March 2013 the Full Bench dismissed Ms Botha's appeal and held that her counter-application in the High Court had no merit. She then appealed to this Court.

In a unanimous judgment, written by Nkabinde J, the Constitutional Court granted leave to appeal and found in favour of Ms Botha. The Court held that Ms Botha is entitled to the transfer of the property as the common law contractual remedy of specific performance is not excluded by section 27 of the Act. The Court further held that it would be unfair to deprive Ms Botha of the transfer as she had already paid a considerable portion of the purchase price. However, the Court held that it would equally be unfair to the Trust to entitle Ms Botha to the transfer of the property without her paying the outstanding arrears.

Relying on the principles of reciprocity in contracts and good faith, the Court ordered that Ms Botha is entitled to the transfer of property. However, she must, in return, register a bond over the property as required by section 27 of the Act and to pay all outstanding amounts to the Trust. The Trust was ordered to pay the costs.