

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT 01/06

The Campus Law Clinic (University of KwaZulu-Natal Durban)

vs

Standard Bank of South Africa Ltd and Another

Date of Judgment: 31 March 2006

MEDIA SUMMARY

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

The case concerned the circumstances in which a court or court official will permit a creditor to sell immovable property in order to recover a mortgage bond owed to it. It revolved around what safeguards, if any, should be put in place to ensure that the constitutional right of access to adequate housing is taken into account when a right to execute against immovable property that is a home is made.

The applicant, the Campus Law Clinic at the University of KwaZulu Natal, approached the Court seeking leave to appeal against a judgment of the Supreme Court of Appeal, alternatively, seeking direct access to this Court. The Campus Law Clinic was not a litigant in the matter before the Supreme Court of Appeal and asked the Court to allow it to bring this appeal in the public interest. The first respondent, Standard Bank, which was a party to the proceedings in the SCA, opposed both applications. The second Respondent, the Minister for Justice and Constitutional development, had also not been a party to the proceedings appealed against. None of the original defendants in the case before the SCA applied to take part in this appeal.

The first issue the Court had to decide was whether the Campus Law Clinic had standing to appear in the matter when it had not been a party to the proceedings before. The second question was, if it did have the right to proceed with the matter, whether it was in the interests of justice that the applications be heard by the Court.

The case began when Standard Bank issued summons in the Cape High Court against nine defendants who were in default in paying their home loans. The Deputy Judge President had instructed that the registrar may not grant orders declaring the immovable property to be executable and the nine matters were enrolled for argument in the High Court. The Deputy Judge President gave this instruction on the basis of this Court's decision in *Jaftha v Schoeman*, which ruled that a warrant of execution against

immovable property may not be granted except by a court that has considered all the relevant circumstances of the case including the issue of the constitutional right of access to housing. The Cape High Court refused to issue an order permitting Standard Bank to execute against the homes in question because the summonses had not set out the facts necessary to permit the Court to consider all the relevant circumstances as contemplated in *Jaftha*'s case.

Standard Bank appealed to the SCA, which reversed the order of the High Court and made an order declaring that Standard Bank could execute against the mortgaged property. It also issued a practice direction requiring plaintiffs who seek to declare immovable property executable to include a note in the summons drawing the defendant's attention to the provisions of section 26 of the Constitution.

The Court held that the fact that the Campus Law Clinic was not a party to the proceedings in the Supreme Court of Appeal did not constitute an absolute bar to their obtaining leave to appeal to this Court. Nevertheless it was not in the interests of justice for them to be granted leave in the present case, which involved a challenge to statutory provisions and a rule of court. The record on appeal was not sufficient for a full consideration of all the issues relevant to the matter. Interested parties, such as the Minister, other lending bodies, and home-owner associations, had not been given a full opportunity to be heard. The Court accordingly unanimously dismissed both applications, stressing that it was open to the Campus Law Clinic and other interested persons to bring fresh proceedings involving all interested parties with a view to producing a full record to enable all the issues raised to be dealt with in a comprehensive rather than a piecemeal manner.