



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 December November 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Percy Mosuetsa v Derrick Mosuetsa and Others (746/2022) [2023] ZASCA 164 (1 December 2023)

Today the Supreme Court of Appeal (SCA) granted an application for the reinstatement of an appeal. It further dismissed the appeal which emanated from the full court of the Gauteng Division of the High Court, Johannesburg (the full court), with no order as to costs.

Percy Mosuetsa (the appellant), in an application to the Gauteng Division of the High Court, Johannesburg (the high court), sought that the second respondent, the Master of the High Court, South Gauteng, Johannesburg, (the Master) remove his half-brother, Derrick Thabo Mosuetsa (Derrick), the first respondent, as the Master's appointed representative of the deceased estates of their parents, Mrs Sibongile Mosuetsa and Mr Solomon Mosuetsa. Ancillary to the aforesaid relief, the appellant also required that the Registrar of Deeds, Johannesburg (the third respondent) be ordered to reverse or prevent the transfer of ownership of the property described as 1369 Kgoposto Street, Molapo, Soweto (the property) into the name of Derrick. The pertinent relief was that the relevant Sheriff of the court be interdicted from giving effect to the warrant of ejectment granted against the appellant and those who occupied the property.

Mrs Sibongile and Mr Mosuetsa were married to each other in community of property in 1968. Mrs Mosuetsa came into the marriage with a child (the appellant) from a previous relationship. Three children were born to Mrs and Mr Mosuetsa, the eldest being Derrick. Mrs Mosuetsa passed away on 5 July 2003. On 21 February 2008, Derrick received letters of authority from the Master authorising him to take control of the assets in the estate of his late mother. During Mr Mosuetsa's lifetime, and by way of a donation affidavit dated 14 October 2007, Mr Mosuetsa donated the property to Derrick. The appellant had been residing on the property since 1995. Mr Mosuetsa died on 20 December 2011. The Master issued letters of authority in favour of Derrick on 12 April 2012 authorising him to take control of the assets in the estate of his late father, Mr Mosuetsa.

On 14 November 2012, the Master accepted that the donation made to Derrick of the property during the lifetime of Mr Mosuetsa meant that the property did not fall into his estate. On the very same day, ownership of the property was transferred to Derrick and his wife by the Registrar of Deeds, Johannesburg. This led to the application in the high court to evict the appellant from the property.

On 10 October 2013, Kgomo J granted an order directing that the appellant and all persons who occupied the property were to be evicted and were to vacate the property by no later than 30 November

2013. Further, that order directed that the appellant was interdicted from returning to the property after being evicted.

On appeal, the full court stated that the high court granted the order that it did on the basis that Derrick was the undisputed owner of the property.

In granting the application for the reinstatement of the appeal, the SCA held that the appellant had made out a case which merited the granting of condonation according to settled legal precedent. In addition to this, the SCA held that, for the sake of finality and in the interests of justice, it was appropriate for the Court to reinstate the appeal.

In addressing the merits of the appeal, the SCA held that what was fundamental to the present appeal was the fact that an order of court was granted based on a finding that Derrick was the owner of the property. The SCA then reasoned that this order has not been challenged and remains extant and binding until it has either been rescinded or set aside on appeal.

The SCA further held that an order of a court of law stands until set aside by a court of competent jurisdiction, holding that Kgomo J's order, based as it is on the ownership of Derrick, is decisive of that issue. The SCA reasoned that this applies equally to administrative action, such as the decision of the Master to recognise the validity of the donation and the corresponding decision that the property did not fall into the estate of Mr Mosuetsa.

In the last instance, the SCA held that all the orders that followed in the high court are a nullity as, factually, Kgomo J's order had pronounced a final judgment on the issue and there is accordingly no basis to interfere with the order granted by the full court.

In the result, the SCA made an order reinstating the appeal and further dismissing the appeal with no order as to costs.

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