



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: 31 March 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

Thomas and Another v Thomas (1223/2021) [2023] ZASCA 36 (31 March 2023)

Today the Supreme Court of Appeal (SCA) upheld the first and second appellant's appeal with costs. It further set aside and substituted the Northern Cape Division of the High Court, Kimberley's (the high court) order, replacing it with an order dismissing the application with costs.

The first appellant, James William Thomas and the respondent, Barend Thomas, are brothers who had previously owned farms that were adjacent to each other. Around 1999, subsequent to encountering financial difficulties, the respondent sold two of his farms to settle his debts. One of these farms Middelplaats-Sotu, No. 104 (Middelplaats) was bought by the second appellant, Middelplaas-Suid Landgoed (Edms) Bpk, which is jointly owned by the first appellant and his son. Following the sale of Middelplaats, the respondent refused to vacate its premises. The appellants sought an order to evict the respondent and succeeded with costs. The respondent failed to pay the costs in relation to the eviction judgment. Consequently, the appellants sought an order for his sequestration from the high court. The final sequestration order was granted on 17 March 2006.

On 28 May 2010, the respondent was rehabilitated and on 15 November 2018, he brought an application before the high court seeking that it be declared, amongst others, that his right, title and interest in the action instituted against the first and second defendant in the high court be deemed not to form part of his insolvent estate; that the creditors and trustees of his insolvent estate have, by not laying claim thereto, waived all the rights they may have had in his right, title and interest in the said action; that the trustees be authorised to relinquish on behalf of the insolvent estate and in favour of him, all claims to his right, title and interest in the action; and that he be authorised to pursue and enforce his right, title and interest in the action for his own benefit. He submitted that the right, title and interest in the action was a personal right which became an asset and formed part of the insolvent estate.

The high court found in favour of the respondent, holding that it is apparent that the appellants did not attach the respondents right title and interest in the action thereby monetising the claim. It found that the respondent was rehabilitated and that pre-sequestration debts should be extinguished with regard being had to the absence of opposition at rehabilitation stage of all debts afforded to a rehabilitated insolvent based on s 129(b) of the Insolvency Act 24 of 1936 (the Act).

The SCA, held that the right of action in issue had been extinguished long before the rehabilitation of the respondent.

The SCA stated that once it was established that the right of action had been abandoned by the trustees, the real question that should have been posed was rather what effect the abandonment had as opposed to what effect the order of rehabilitation have on the insolvent as was postulated by the high court.

In the result, the SCA made an order upholding the appeal with costs and setting aside and substituting the high court's order with one dismissing the application with costs.

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