



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: 29 MAY 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

Pretorius v Agricultural Research Council (Case no 250/22) [2023] ZASCA 76 (29 May 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the defendant's purported renewal of a lease agreement concluded on 25 November 2010 (the initial agreement) between the Agricultural Research Council (the plaintiff) and Mr Daniel Nel Pretorius (the defendant), was valid. In terms of the lease, the plaintiff let a farm known as Plot 103, Kameeldrift, Pretoria (the property), to the defendant for a period of nine years and 11 months, which commenced on 1 August 2001, terminating on 30 June 2011. It contained a term that gave the defendant an option to renew the lease, subject to the express condition that the right of renewal could not be exercised while he was in breach or default of any of the terms of the initial agreement.

The defendant again fell into arrears with his payment obligations under the initial agreement. On 15 October 2010, he signed an acknowledgment of debt (AOD) in terms of which he acknowledged his indebtedness to the plaintiff in the amount of R203 043.95, in respect of municipal charges. The defendant undertook to pay this amount by way of a minimum monthly instalment of R20 000 and to settle the outstanding balance by 31 March 2011.

On 25 November 2010, whilst in arrears with his obligations under the initial agreement, the defendant purported to exercise the option to renew that agreement in writing. The plaintiff contended that the purported renewal was of no force and effect, and that the initial agreement came to an end by the effluxion of time on 30 June 2011. After 30 June 2011, the defendant continued to occupy the property. The plaintiff's case was that this occupation was in terms of a month-to-month agreement. The defendant denied this. He claimed that the initial agreement had been renewed and that he was entitled to occupy the property until 31 May 2021.

Counsel for the defendant argued that the option was validly exercised, because he was not in breach of the AOD; and that the AOD constituted a waiver of the plaintiff's right to cancel the

agreement and an alteration of the defendant's payment obligations, which constituted an amendment of the initial agreement.

The SCA found that the defendant had neither alleged nor proved that the plaintiff had waived any right under the initial agreement, and that it had not been amended by the AOD. It held that the AOD was the clearest admission by the defendant: (i) that he was in default of his obligations under the initial agreement; (ii) as to how the default arose; and (iii) of the steps taken to cure the default. The SCA concluded that the high court thus correctly found that the defendant was in default of his obligations under the initial agreement when he purported to exercise the option to extend the lease. Consequently, the appeal was dismissed with costs, including the costs of two counsel.

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