



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 26 March 2020
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Motloung and Another
v
The Sheriff, Pretoria East and Others

Today the Supreme Court of Appeal upheld an appeal from the Gauteng Division of the High Court, Pretoria. The appellants wished to claim damages from the Road Accident Fund arising from a motor vehicle collision. The attorney for the appellants sent a summons to the Sheriff for Pretoria East, requesting service on the Fund. The Sheriff refused to serve the summons and the claim against the Road Accident Fund was time barred as a result.

In the present action, the appellants claimed damages from the Sheriff, averring that his negligence caused them to be unable to pursue the action against the Fund. The Sheriff entered a special plea. This was to the effect that the summons was a nullity and did not amount to court process. He was accordingly not obliged nor permitted to serve it.

The basis of his contention arose from the fact that the Registrar of the High Court had failed to sign the summons. He had allocated a case number, stamped it with a

stamp containing his name, his designation as Registrar and the date and sent it out for service. Because Rule 17(3)(c) of the Uniform Rules of Court makes it peremptory for a Registrar to issue and sign a summons, the Sheriff considered that an unsigned summons was a nullity. This view was based on dicta of this court which say that a summons which has not been issued is a nullity. There were two conflicting decisions of Divisions of the High Court on the point.

Baqwa J, sitting as a court of first instance, held that the summons was a nullity. He accordingly upheld the special plea and dismissed the action against the Sheriff with costs but granted leave to appeal to the Supreme Court of Appeal.

The crisp issue in the appeal was whether the summons was a nullity or was one containing an irregularity which could be condoned under Rule 27(3). If it was a nullity, the special plea must succeed and if it was condonable, it must fail. After reviewing the basis on which the dicta were made and the conflicting decisions on the point, the Supreme Court of Appeal held that the failure of a Registrar to sign a summons was susceptible to condonation. The order of the Gauteng Division of the High Court, Pretoria, was set aside and substituted with an order dismissing the special plea with costs, including the costs of two counsel where employed.