



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 7 October 2020

Status: Immediate

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

Whitehead and Another v Trustees of the Insolvent Estate of Dennis Charles Riekert and Others (567/2019) [2020] ZASCA 124 (7 October 2020)

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant with costs to be borne by the appellants, jointly and severally, the one paying the other to be absolved.

The first appellant is Ms Renette Whitehead who was Mr Charles Riekert's partner. In 2007 they bought a farm from the second and third respondents (the Fuhris). Ms Whitehead and Mr Riekert, jointly, obtained a mortgage bond from the fourth respondent, ABSA Bank Limited (ABSA). Ms Whitehead and Mr Riekert later separated and the payments on the bond were in arrears. ABSA got a summary judgment including leave to execute on Ms Whitehead's undivided half share in the farm. Leave to appeal against that order was refused. A sale in execution was proceeded with. A fortnight after the sale in execution had occurred, Ms Whitehead and the second appellant, Mr Du Preez, launched an application alleging that the sale of the farm by the Fuhris to Ms Whitehead and Mr Riekert was null and void in terms of their interpretation of s 3(b) of the Subdivision of Agricultural Land Act 70 of 1970 (SALA), which, so it was contended, meant that the sale by the Fuhris to Ms Whitehead and Mr Riekert was null and void on grounds of unlawfulness for want of consent by the Minister of agriculture for them to own the farm jointly. ABSA contended that the absence of the Minister's consent did not result in an unlawful sale. The application to declare the sale by the Fuhris unlawful and set aside the sale in execution was dismissed by the court a quo. It is that judgment which was before this Court on appeal. This Court found it unnecessary to decide which perspective concerning the interpretation of s 3 of SALA was correct. ABSA also contended that the appellants were bound by the court order it had obtained.

The SCA held that the effect of the relief sought was to override or nullify the effect of the summary judgment order. The critical and determinative question for decision was whether it was open to the appellants to bring such an application which achieves that end, the order itself having been neither rescinded nor set aside on appeal. This Court held that the only means by which an order of a court of first instance would be nullified was by either rescinding the order or by setting it aside through a successful appeal. In this matter, the order granting summary judgment and authorising execution against the property was made by a competent court at the conclusion of fully defended proceedings. Further, this Court established that the aggrieved litigants, by their conduct, demonstrated an acquiescence in the orders granted against Ms Whitehead and thus peremption operated against them. It was further held that it was correctly conceded that on the premise of her case, Ms Whitehead could lay no claim, whatsoever, to title over the farm and were her contentions to have been correct the effect of that would have been that she lacked locus standi to bring the application. For all those reasons the appeal was dismissed with the costs of the appeal borne by the appellants.

--THE END--