



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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.

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ETHEKWINI MUNICIPALITY v R BROOKS – Case No 411/09

The Supreme Court of Appeal today dismissed an appeal by the Ethekwini Municipality against a judgment of the KwaZulu-Natal High Court, Durban, relating to the status of a road in the Drummond area, known as Nyala Drive.

The respondent, Mrs Rosalind Brooks, applied to the high court for an order declaring that the road is not a public road, as defined in s 1 of the Local Authorities (Natal) Ordinance 25 of 1974. It appeared from the evidence that the road was created during the 1960s within the area of a servitude of right of way that runs over the property of Mrs Brooks. The road, which is a cul-de-sac, links her property as well as certain adjoining subdivisions in the area to Thousand Hills Drive.

The municipality argued that the public had acquired a right to use the road; alternatively, that the municipality had taken over the road in question, as contemplated by the Ordinance. In the further alternative, the municipality relied on the provision in the definition to the effect that it is a street ‘which is shown on a

general plan or diagram of any private township situate in the area of a local authority filed in the Deeds Registry or the Surveyor-General's Office and to which the owners of erven or lots in such township have a common right of use'. The high court rejected the municipality's arguments. It accordingly granted a declaratory order in favour of Mrs Brooks, holding that Nyala Drive is a private road.

On appeal, the SCA confirmed the judgment of the high court and dismissed the appeal with costs.

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