



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 16 May 2018
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.

Rajah v Balduzzi (076/2017) [2018] ZASCA 57 (16 May 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Local Division of the High Court, Johannesburg (the High Court). The appeal concerned two orders of the High Court, the first order (Wepener J), issued on 4 April 2014, upheld a special plea of prescription to the executor's counter-claim. The second (Matojane J) 'confirmed' that the special plea was upheld and that the issue of prescription was *res judicata*.

Mr Balduzzi, the respondent, issued summons on 31 July 2007, seeking the eviction of Mrs Rajah, the first appellant, from the property described as Portion 1 of Erf 1979 Orange Grove Township, also known as 127 17th Street, Orange Grove, Johannesburg (the property). Mr Balduzzi contended that he was the owner of the property and, despite demand, Mrs Rajah has failed and/or refused to vacate the property. Mr Balduzzi sought summary judgment to, which Mrs Rajah submitted that the property belonged to her late husband, Mr Manogaram Rajah. She attached a copy of the original title deed explaining how her husband came to be in possession of the original and how occupation of the property had occurred.

Mr Brasg, the attorney and executor of Mr Rajah's estate, the second appellant, submitted that the estate was the beneficial owner of the property and that Mr Balduzzi had acted as a nominee of Mr Rajah. The property was in a white residential area and due to the Group Areas Act 36 of 1966 Mr Rajah was prevented from taking transfer of the property into his own name, hence Mr Balduzzi agreed to keep the property registered in his name as

nominee. Mr Brasg brought a counter-claim for the transfer of the property into the name of the deceased estate in terms of section 48(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 (the Abolition Act).

Mr Balduzzi raised a special plea of prescription to the counter-claim. In the special plea, which was decided in his favour, he pleaded that the claim for the transfer of the property had prescribed in terms of both the Prescription Act 68 of 1969 (the Prescription Act) and the Abolition Act, as a period of twenty-two years had lapsed, since the promulgation of the Abolition Act.

On appeal the SCA held that the claim for registration of the property in the name of the estate was a claim to title of the property that arose as a result of the alleged arrangement between Mr Rajah and Mr Balduzzi, held by the latter as nominee on behalf of Mr Rajah. Accordingly, the claim ought to have been brought under section 3 of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act) rather than the Abolition Act. The SCA went further and found that section 22 of the Restitution Act provides that the Land Claims Court has the exclusive jurisdiction to determine a right to restitution in terms of the Restitution Act, for this reason the High Court lacked jurisdiction to hear the counter-claim.

Leave to appeal against both judgments was granted, the appeal was upheld with costs including the costs of both applications for leave to appeal in the High Court and the application for leave to appeal in the SCA. The appellants were directed to institute their action in the Land Claims Court within six months from the date of the SCA order, failing which the second appellants' counter-claim would lapse.