

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN 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.

HACK STUPEL AND ROSS ATTORNEYS v LESLIE KGANG

The Supreme Court of Appeal today upheld the appeal of the Hack Stupel and Ross, a firm of attorneys, in which the Pretoria High Court ordered them to pay damages in the amount of R63 000 to the respondent, Mr Leslie Kgang. The High Court held that the amount constituted the fair market value of a house formerly owned by Mr Kgang and that this amount represented damages sustained by him as a result of the property being wrongly sold at a judicial sale in execution by Hack Stupel and Ross, acting on the instruction of their client Ms Joyce Vilakazi.

In upholding the appeal the SCA pointed out that: (a) the first problem with the High Court judgment is that it granted judgment in favour of Mr Kgang for the damages in motion proceedings contrary to the basic rule that damages are not claimable in motion proceedings; (b) secondly, the respondent had not made any allegation in his affidavits that he had suffered damages; (c) thirdly,

the respondent did not state what the amount of damages is that he has suffered; (d) in the fourth place, the High Court appears to have reached its conclusion on the amount for which the property was sold in execution (the R63 000) from correspondence not authenticated or confirmed by affidavit and what is more the judge, quite inappropriately, based the amount of damages on evidence he had obtained from an attorney after he had reserved judgment and did so without notice to the parties.

The appeal was upheld with costs.