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: 26 September 2008

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.

BOTHA v ANDRADE (578/2007) [2008] ZASCA 120 (26 September 2008).

Mr Nico Botha, an owner of a farm in Twee Rivieren in Joubertina succeeded today, in getting the Supreme Court of Appeal to reinstate a prohibitory interdict which a magistrate of Joubertina had granted in his favour, restraining the owners of a neighbouring farm from conducting a saw mill business and a brick making business on their farm, contrary to the municipal zoning of the property under the town planning scheme. The operation of the two businesses created nuisance in the form of noise disturbance, pollution from sawdust, wood waste and brick works onto Botha's farm.

The neighbouring farm owners had successfully appealed to the Eastern Cape High Court (before Goosen AJ and Pickering J) which set aside the interdict granted by the magistrate on the basis that the magistrates' court had no jurisdiction in the matter as the value of the businesses were more than R100 000, the monetary jurisdictional limit of the magistrates' court.

The SCA found that although the high court was correct in ruling that the limit of magistrates' courts' jurisdiction was R100 000, it nevertheless erred in attaching the value to the businesses rather than the unlawful activities to which Botha's complaint related and which were capable of quantification.

The SCA found that the neighbouring farm owners who bore the onus to do so, had placed no evidence before the magistrate as to the cost of abating the nuisance caused by the unlawful activities and that it had accordingly not been shown that the magistrate did not have jurisdiction to grant an interdict under s 30(1) of the Magistrate's Courts' Act 32 of 1944.