



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

18 September 2009

STATUS: Immediate

JC Swanepoel v SS Nameng (43/2009)[2009] ZASCA 101 (18 September 2009)

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

The SCA today dismissed an appeal by Mr Jacobus Cornelius Swanepoel against a judgment of Motloung AJ sitting in the Johannesburg High Court. The learned judge had granted an order declaring valid and binding an agreement which Mr Swanepoel had entered into with Mr Sunnyboy Solomon Nameng for the sale of certain immovable property, being erf 1173 of Greenstone Hill, to Mr Nameng.

Mr Swanepoel sought to avoid the agreement by asserting that the agreement was not valid because the property was initially incorrectly described as erf 1172 instead of erf 1173.

The SCA rejected his argument and held that all the essential elements of a valid sale of land on the face of the written agreement had been complied with, and that the agreement complied with the provisions of s 2(1) of the Alienation of Land Act 68 of 1981.

The further argument by Mr Swanepoel that the agreement had lapsed because a suspensive condition in the agreement which required the approval of a bank loan to have been secured by Mr Nameng by a particular date had not been satisfied, was also rejected by the SCA. The loan had been approved timeously and in compliance with

the agreement in relation to erf 1172. But the amendment of the description of the property from erf 1172 to erf 1173, had the effect that Mr Nameng had to make a fresh application for a loan, which was approved after the deadline. The SCA held that once the suspensive condition had been fulfilled in relation to erf 1172 the inchoate agreement had become complete. And thereafter once the agreement was amended to reflect the correct erf, it was enforceable as against Mr Swanepoel. Mr Swanepoel's appeal was accordingly dismissed.