



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 17 November 2009

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

On 17 November 2009 the Supreme Court of Appeal handed down judgment in *Absa Bank Ltd v P de Villiers and another*, in terms of which it dismissed an appeal by Absa Bank against a judgment of the Cape High Court. That court had refused an application brought by Absa for a review of a Magistrate's decision denying it the authority to repossess a motor vehicle it had sold to the respondent, Mr Pieter de Villiers.

During September 2007 Absa had approached the Magistrates' Court for the district of Simon's Town, *ex parte*, seeking an order that the vehicle it had sold to Mr de Villiers be returned to it. At the time that it applied to court the amount in arrears was said to be R6 980.59 and the total outstanding R65 049.08.

Shortly before it applied to court, Absa had sent Mr de Villiers a letter, informing him of the arrears and the outstanding balance. Payment was demanded, alternatively, he was requested to return the vehicle voluntarily. Mr de Villiers was informed, in terms of the provisions of the National Credit

Act 34 of 2005 (the NCA), of his right to refer the matter to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent to resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement, up to date.

Mr de Villiers did not respond to the notice, prompting Absa's approach to court, claiming that the provisions of the NCA entitled it to the return of the motor vehicle. The Magistrate considered that, apart from generalised comments, Absa had provided no acceptable proof that harm had been caused to the vehicle or that it was likely that the vehicle would be damaged if it remained in Mr de Villiers' possession. The Magistrate considered the provisions of the NCA and concluded that as Absa had not cancelled the agreement it was not in the circumstances of the case entitled to the return of the vehicle. He held that Absa's reliance on the NCA was fallacious.

Aggrieved, Absa applied to the Cape High Court to review the decision of the Magistrate on the basis of 'a gross irregularity in the proceedings' as contemplated in s 24 of the Supreme Court Act 59 of 1959. The basis for the review was no more than that the Magistrate's view of the law was incorrect. The Cape High Court, instead of concluding that no basis existed for the review, went on to decide the merits of the case, confirming the Magistrate's conclusion and in essence, his reasoning.

This court held that the application for review should not have been entertained at all as it lacked a jurisdictional foundation. Even assuming that the Magistrate's view of the law was incorrect, which is not at all clear, Absa's relief lay in an appeal and not by way of review. This court observed that perhaps even more fundamentally, the Magistrate was entitled to refuse to entertain the application on the basis that, in effect, final relief was being sought without the knowledge of Mr de Villiers, who was excluded on the flimsiest basis. He was being denied an opportunity of presenting his case in relation to the interpretation contended for by Absa. Mr de Villiers was not

represented before the Cape High Court nor before us. The appeal was accordingly dismissed without any order as to costs.