



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: 26 September 2011

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.

Pick 'n Pay v Eayrs & others NNO

The Supreme Court of Appeal today dismissed an appeal by Pick 'n Pay, the holder of a right of pre-emption in terms of a franchise agreement, against the judgment and order of the Eastern Cape High Court, Port Elizabeth upholding the application of The Daku Trust, the purchaser of the shares in and claims to the franchisee company. The latter operated a Pick 'n Pay franchise, the Pick and Pay Family Supermarket, in Port Elizabeth. The holder of the shares in the franchisee company, the Holdstock Family Trust, sold 50 per cent of the shareholding in the franchisee company to The Daku Trust. This agreement for the sale of shares was concluded long after the franchise agreement between Pick 'n Pay, the franchisee company and the Holdstock Family Trust had been entered into. The franchise agreement required Pick 'n Pay to exercise its right of pre-emption to purchase the shares sold to The Daku Trust within 30 days of an offer being made to it by the seller of the shares,

the Holdstock Family Trust. Pick 'n Pay did not exercise its right of pre-emption but instead concluded an agreement with the franchisee company and the seller of the shares extending the right of pre-emption. This agreement was concluded after the sale of shares agreement. The Supreme Court of Appeal upheld the decision of the high court preferring the right of the purchaser, The Daku Trust, for delivery of the shares and claims sold to the extended right of pre-emption asserted by Pick 'n Pay. In doing so the Supreme Court of Appeal, as did the high court, applied the maxim of law *qui prior est tempore potior est iure* ('he who is earlier in time has the stronger right').