

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 30 September 2011
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Votani Majola v Nitro Securitisation
(567/10) [2011] ZASCA 180 (30 September 2011)
Media Statement

Today the Supreme Court of Appeal (SCA) delivered judgment dismissing the appeal of the appellant against an order of the South Gauteng High Court, Johannesburg in terms of which summary judgment was granted against him and he was ordered to return to the respondent a Jaguar motor vehicle that he had bought on credit.

The appeal was dismissed in terms of rule 13(3) of the SCA rules. This rule allows the court to dismiss an appeal on account of the non-appearance of an appellant. In this case the appellant had failed to appear when his appeal was first on the roll. It was struck from the roll and he was ordered to pay the respondent's costs on an attorney and client scale before he was permitted to set the matter down again. He was also ordered to give an explanation for his failure to appear. He did neither but continued to possess the Jaguar. This led the respondent to request that the matter be set down despite the failure on the part of the appellant to comply with the order. When the matter was heard on the second occasion, the appellant failed to appear once again.

The court held that rule 13(3) envisages the dismissal of an appeal for non-appearance as its default position but that if there are good grounds it may, in its discretion, opt for a less drastic alternative such as either striking an appeal from the roll or postponing it.

In this case the court considered three sets of facts and circumstances: those relating to the appellant's failure to appear, the position of the respondent and the prospects of the appeal succeeding. The appellant had failed to appear on two occasions and had not explained his absence. He was an attorney and so, as an officer of the court, this discourteous conduct was rendered all the more serious. He had also been warned in correspondence from the registrar that if he failed to appear his appeal would be in danger of being dismissed. The respondent continued to suffer prejudice for as long as the matter was not finalised. The court, in considering the merits, concluded that the appeal had no prospect of succeeding. As a result of a consideration of these factors, the court found that there was no basis for either striking the matter from the roll or postponing it. The appeal was accordingly dismissed with costs on an attorney and client scale.

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