



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: 30 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.

Mkhize v Umvoti Municipality

The Supreme Court of Appeal today dismissed an appeal against the judgment and order of the Kwa-Zulu-Natal High Court dismissing an action by Mr Mkhize, the plaintiff in the court below and appellant in this court, for the setting aside of a sale in execution and subsequent sales of immovable property that had belonged to him. The Umvoti Municipality in which area the property is situate obtained judgment by default against him in respect of arrear rates and other charges relating to the property. A warrant of execution against the immovable property was issued by the clerk of the magistrates' court and a sale in execution

followed. The plaintiff based his claim for the invalidity of the sale in execution on the judgment of the Constitutional Court in *Jafftha v Schoeman & others; Van Rooyen v Scholtz & others* 2005 (2) SA 140 (CC) arguing that the lack of judicial oversight rendered the sale in execution invalid – the warrant of execution was issued not by a magistrate but by the clerk of the court. In dismissing the appeal the Supreme Court of Appeal accepted that judicial oversight was required in all cases of execution against immovable property but only in order to protect the right to adequate housing enshrined in s 26(1) of the Constitution. For this reason a case-by-case inquiry is required in all cases of execution against immovable property to determine whether the right to adequate housing is compromised. But it does not follow that in cases where the right to adequate housing is not implicated sales in execution will be invalid. This is so because the sales stand unless set aside but more so because no s 26(1) rights are involved.