THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 30 May 2012
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

---

Neutral citation: *Hattingh v* Juta (440/2011) [2012] ZASCA 84 (30 May 2012)

The three appellants reside on Fijnbosch farm in the district of Stellenbosch, a property owned by the respondent. They have done so since December 2002 when they moved into a house on the property which the respondent had permitted the mother of the first and third appellants to reside in. The respondent applied to the Stellenbosch Magistrate's Court for an order evicting the appellants from the house. This application was unsuccessful but an appeal brought by the respondent to the Land Claims Court, Cape Town was upheld and, on 30 March 2011, that court set aside the magistrate's order and issued an order directing the appellants to vacate the property by 20 May 2011. With leave of the Land Claims Court, the appellants then appealed to the Supreme Court of Appeal.

In seeking to evade eviction the appellants contended that they are entitled to remain on the property by virtue of the mother of the first and third appellants, who is an occupier as envisaged by the Extension of Security of Tenure Act 62 of 1997, being entitled to exercise her right under s 6(2)(*d*) of the Act to have a family life in accordance with the culture of that family. The appellants alleged that the culture of their family was an issue which was family

specific, that theirs was a caring family the members of whom supported and looked after each other and who had shared their home with each other. This it was submitted constituted their culture as envisaged by s 6(2)(*d*) which, so it was argued, should be broadly interpreted and was in no way limited to considerations such as race, ethnicity, religion, language and community. The appellants conceded that they had placed no evidence relevant to these latter factors before court and that, should it be held that culture was not a matter of a family's individual practice but a matter of association and practices pursued by a number of persons as part of a community, they had not made out a case to avoid eviction.

The Supreme Court of Appeal, with reference to the judgment of the Constitutional Court in *MEC for Education, KwaZulu-Natal & others v Pillay* 2008 (1) SA 474 (CC) concluded that 'culture' as envisaged by the section was an inherently associative practice pursued as individuals as part of a community. As the appellants had not failed to establish that in terms of an associative culture their family would have resided together in a manner in which they lived, the appeal had to fail.

The appeal was therefore dismissed.

---ends---