



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 November 2015
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.

Köster v Norval (20609/14) [2015] ZASCA 185

The Supreme Court of Appeal (SCA) today dismissed an appeal against the order of the Western Cape Division of the High Court, Cape Town, ordering the appellant to pay to the respondent an amount of R2 million with interest together with costs.

The appellant and respondent had entered into an agreement for the sale of a game farm in February 2004. At the same time, in a separate contract, the respondent sold to the appellant all the game on the farm. When these contracts were entered into the farm, the

farming implements and the game formed the assets of a company known as Flexinvest 6 (Pty) Ltd. In terms of the contract in respect of the sale of the game, the appellant was to make payment of R2 million for the game five years after the contract was entered into. When that period had elapsed the appellant refused to make payment to the respondent who then sued him.

The appellant contended that he was not liable to make such payment in the light of the fact that the respondent was not the owner of the game. It was found that ownership of a thing is not an essential feature of the contract and sales by non-owners are quite permissible. This is precisely what the court below found as also that the game stock was on the farm and put at the disposal of the appellant when the latter took occupation of the farm. The appellant indeed, with his son, traded with that game stock during the course of the game farming business conducted thereafter.

This court found that all that was needed was for the respondent to deliver undisturbed possession of the game and to warrant against eviction thereof. Having found that both these requirements had been complied with, it accordingly dismissed the appeal with

costs.