



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 27 September 2016

STATUS Immediate

ACSA v Exclusive Books (945/2015) [2016] ZASCA 129 (27 September 2016)

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.

The SCA today dismissed an appeal against a judgment of the Gauteng Local Division that had held that an application by the Airports Company of South Africa to evict a tenant, Exclusive Books, from the O R Tambo International Airport, fell to be dismissed. Exclusive and ACSA had concluded a lease for five years, pursuant to a tender process, which was scheduled to terminate on 31 August 2013. By mid-August ACSA had not begun the process to request bids for the lease of the premises. It obviously did not want Exclusive to vacate the premises at the end of August and Exclusive, which intended to make a bid for the lease to be awarded in due course, did not wish to vacate the premises either.

ACSA and Exclusive thus agreed to extend the lease 'month on month' on the same terms as the lease pursuant to which Exclusive had had occupation. The tender proceedings commenced late in 2013, and Exclusive submitted a

bid timeously. In June 2014 Exclusive was advised that the lease had been awarded to another tenant. When given the reasons for this, Exclusive immediately brought an application to review and set aside the award, citing numerous irregularities in the tender process.

Nonetheless, on 18 June 2014 ACSA gave Exclusive notice to vacate the premises by the end of August, despite correspondence relating to the review, and an urgent eviction application was served on Exclusive after it had already brought the review application. The application was struck off the urgent roll and was heard in 2015. Dodson AJ found that the agreement to extend the lease was subject to a tacit term that neither party could give notice to vacate before the valid award of the tender to a lessee. He also found that Exclusive had successfully challenged the bid process collaterally.

On appeal ACSA argued that Dodson AJ had erred in finding that there was a tacit term and that the tender process could be challenged collaterally. The SCA did not consider it necessary to find that a tacit term existed. It was for ACSA to prove that the lease extension agreement had been validly terminated on the giving of six weeks' notice. It had not done so. The SCA found that the lease extension was of indefinite duration – a periodic lease – that was terminable on reasonable notice. In the circumstances of the case, where the factual matrix was such that the parties contemplated that Exclusive would remain in occupation of the premises until the new lease was concluded, either with Exclusive or another lessee, notice would not be reasonable until the conclusion of a valid tender process. It was not terminable on a month's notice, as ACSA contended. The SCA accordingly dismissed the appeal.