

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: 16 September 2016

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.

Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd

The SCA today dismissed an appeal against the judgment of the Western Cape Division of the High Court dismissing an application brought by Media24 against Oxford University Press (OUP), in which Media24 claimed that OUP's *Oxford Afrikaans-Engels/English-Afrikaans Skool Woordeboek* infringed its copyright in its own *Pharos Aanleerderswoordeboek vir Skole*. The court held that Media 24 had failed to prove copying and for that reason its claim had to fail.

The basis of the claim was said to have arisen when Media24 was planning a new bilingual dictionary for schools. It claimed that in perusing the OUP dictionary it found that the headwords, the sense order of words and sentences used to illustrate the meaning of words were so similar that this could only be attributed to copying on the part of OUP. The latter for its part described in detail the manner in which its dictionary had been compiled and disavowed copying.

At the hearing in the High Court and in the SCA the focus fell on the similarity between the illustrative sentences as they appeared on both the Afrikaans and the English sides of the two dictionaries. OUP filed

affidavits by the three compilers of these sentences in which they all denied copying from Media24's dictionary. Two of the compilers denied even having a copy of that work, while the other said that she occasionally used it along with many other dictionaries in the ordinary course of her work, but did not copy from it. The editor of the compilers' work likewise delivered an affidavit in which he denied making use of Media 24's dictionary. In addition OUP filed affidavits by two expert lexicographers who explained how it was likely that in compiling a dictionary of this type it was probable that there would be similarities between the illustrative sentences in each, given that the words being defined constituted a basic core vocabulary and had to be explained in terms appropriate for children.

Media24 elected to argue its case without the benefit of oral evidence where it would have had the opportunity to cross-examine the witnesses for OUP and seek to establish that they were not telling the truth. Instead it confined itself to contending that the similarities were so great that they demanded the rejection of the evidence on behalf of OUP. The court held, after a consideration of the extent of original work in the OUP publication and a number of factors that counted against copying having occurred, that Media24 had failed to prove copying and accordingly its claim had been properly dismissed.