



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Uniting Presbyterian Church in SA & another v Reformed Presbyterian Church in SA & others

From: The Registrar, Supreme Court of Appeal

Date:

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant with costs and set aside the order of the court a quo.

The first appellant in this case was the Uniting Presbyterian Church in Southern Africa (the UPCSA), a voluntary association with legal personality. The second appellant was a constituent congregation of the UPCSA, situated in Langa, Cape Town (the Langa Congregation) which formed part of the Western Cape Presbytery of the UPCSA. The first respondent was cited as the Reformed Presbyterian Church in Southern Africa (the RPCSA). The second respondent was the City of Cape Town (the City), in its capacity as the municipality.

The appeal concerned two adjoining properties occupied by the respondent, namely erven 546 and 547, Washington Street, Langa (the properties). Erf 546 was registered in the name of the RPCSA. The City was the registered owner of erf 547. The main issue in this case was whether the persons who acted in the name of the RPCSA (the respondent) in this matter in fact represented that entity.

On 22 March 2005, the respondent, acting in the name of the RPCSA, submitted a written application to the City to purchase erf 546. After having followed its standard processes in this regard, the City approved the application. Consequently, the City entered into a written agreement of sale with the respondent, in terms of which the City sold erf 546 to the respondent. Following the agreement of sale, erf 546 was registered in the name of the RPCSA on 17 July 2007.

On 26 June 2008, the respondent, again acting in the name of the RPCSA, submitted an application to the City to purchase erf 547 as well. In terms of its standard procedures, the City published the application for public comment. This resulted in an objection to the application by the Langa Congregation. At about this time, the appellants became aware that erf 546 had already been sold

and transferred. They consequently approached the Western Cape Division of the High Court, Cape Town, for an order aimed at setting aside the sale and transfer of erf 546, obliging the City to transfer it to the Langa Congregation and affording the Langa Congregation the opportunity to submit an application to purchase erf 547. That court (per Thulare AJ) dismissed the application with costs, but granted leave to the appellants to appeal to this court.

On appeal the appellants limited their claim for relief to an order: (a) setting aside the sale and transfer of erf 546 to the RPCSA; (b) interdicting the City from considering the respondent's application to purchase erf 547 until such time as the Langa Congregation has submitted its application to purchase erf 547. This court made emphasis on how the respondent led the City to believe that it represented the RPCSA wherein the respondent was simply a breakaway group that did not represent the RPCSA and that the RPCSA was, in any event, bound to transfer its properties and rights to the UPCS.

Further, the court emphasised that the City as an organ of state governed by transparency and accountability would not permit the sale of public property to a person that materially misrepresented its identity. In the result, the conduct of the respondent caused a material mistake (*error in persona*) on the part of the City.

The court held that when a representation by a party results in a fundamental or material mistake on the part of the other party, the contract does not come into existence at all. That is so because there is no consensus between the parties. In such a case there is no need for cancellation or rescission because there is nothing to cancel or rescind. The City had no intention to transfer ownership of erf 546 to the respondent. It intended to transfer ownership to the RPCSA, an entity that the respondent did not represent.

In summary, no contract of sale came into existence in respect of erf 546 and ownership thereof did not pass. The properties vest in the City and, as between the appellants and the respondent, the appellants are entitled to apply to the City to purchase them.

The appellants did not lodge its notice of appeal and the appeal record in time. They formally applied for condonation of these failures to comply with the rules of this court. The respondent opposed the application and persisted in doing so in argument before this court. In all the circumstances the appellants provided a satisfactory explanation for the delays and the prospects of success on appeal, according to this court, were excellent. A proper case for condonation was made out.

This court upheld the appeal with costs and the order of the court a quo was set aside and replaced. The court ordered that the sale, transfer and registration of erf 546, situated at Washington Street, Langa Township, Western Cape, held by the first respondent under Deed of Transfer T00056121/2007, be set aside; the second respondent was interdicted from considering the first respondent's application in respect of the purchase of erf 547, situated at Washington Street, Langa Township, Western Cape until such time as the second applicant submits its application.