

SOUTH AFRICA / JUDGMENT

Narainsingh v Singh and Another (217/08) [2008] ZASCA 168; [2009] 2 All SA 239 (SCA) (2 December 2008) [2008] ZASCA 168

COURT

Supreme Court of Appeal

BEFORE

Streicher JA, Jafta JA, Kgomo AJA

CASE / FILE NUMBER

217/08

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THE SUPREME COURT OF APPEAL

REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case number: 217/08

No precedential significance

In the matter between:

A S NARAINSINGH APPELLANT

v

KUAR SINGH 1st RESPONDENT

KRUSHEEDA SINGH 2nd RESPONDENT

Neutral citation: Narainsingh v Singh (217/2008) [2008] ZASCA 168 (2 December 2008)

Coram: Streicher JA, Jafta JA et Kgomo AJA

Heard: 13 November 2008

Delivered: 2 December 2008

Summary: Summary judgment.

ORDER

On appeal from: High Court, Pietermaritzburg (Ndlovu J and Murugasen AJ), sitting on appeal from the Magistrate's Court of Lower Tugela (Stanger).

In the result the following order is made:

[1] Claim one

The appeal is upheld and the order by the court a quo is set aside and replaced with the following order:

'The appeal is dismissed with costs.'

[2] Claim two

The appeal is upheld in so far as it relates to the claim for payment of the agreed occupational consideration and the municipal rates and dismissed in so far as it relates to the claim for payment of the purchase price, interest on the purchase price and the legal fees in respect of the deed of sale. The order by the court a quo is set aside and replaced with the following order:

- (a) 'The appeal is upheld to the extent that it relates to the claim for payment of the purchase price, interest on the purchase price and the legal fees in respect of the deed of sale. Save as aforesaid the appeal is dismissed. The order by the court a quo is set aside and replaced with the following order:

"Summary judgment is granted as follows:

- (i) Payment of the sum of R11 751,91.
- (ii) Payment of the sum of R19 575,95.
- (iii) Costs.

Save as aforesaid the application for summary judgment is dismissed and the defendants are granted leave to defend the action."

- (b) The respondent is ordered to pay the costs of the appeal in so far as it relates to claim two.'

[3] Claim three

The appeal is upheld. The order by the court a quo is set aside and replaced with the following order:

- [4] The respondents are ordered to pay the costs of the appeal.

KGOMO (STREICHER JA, JAFTA JA concurring)

- [1] This is an appeal against a judgment in the Pietermaritzburg High Court ('the court a quo') in terms of which a summary judgment in the magistrate's court for the district Lower Tugela held at Stanger, was set aside on appeal. The appeal is with the leave of the court a quo. The respondents did not oppose the appeal.

- [2] The summons in terms of which the appellant instituted action against the respondents in the magistrate's court contained three claims. The first claim was for the payment of rental in respect of a commercial building for the period 1 June 2002 to 31 December 2003 in terms of an oral agreement of lease, mora interest and attorney and client costs. The second claim was for the payment of (i) R100 000, being instalments in respect of the purchase price payable in terms of a deed of sale; (ii) interest on that amount; (iii) R11 751,91, being an agreed amount payable in respect of the occupation of the premises sold; (iv) R19 575,95 being the rates and taxes payable in respect of the premises sold for the period of occupation; (v) legal costs in respect of the deed of sale; and (vi) costs of suit on the attorney and client scale. The third claim was for the ejectment of the respondents from the premises that formed the subject matter of the deed of sale, on the basis that it had been cancelled, and for the payment of damages.
- [3] When the respondents entered an appearance to defend the action the appellant applied for summary judgment in respect of all the amounts claimed in terms of the first and the second claims and in respect of the claim for ejectment in terms of the third claim.
- [4] The respondents opposed the application for summary judgment but the magistrate held that they had failed to disclose a bona fide defence and granted summary judgment to the appellant for the amounts claimed in the first and second claim and for ejectment as claimed in the third claim with costs. On appeal the court a quo set the judgment aside but granted leave to the appellant to appeal to this court.
- [5] The respondents had indeed failed to disclose a defence to the appellant's first claim for rental, mora interest and costs.

However, the court a quo set the summary judgment aside on the ground that the oral agreement of lease alleged by the appellant 'lacked some of the common material clauses in a lease agreement' such as who would be responsible for maintenance and repairs and whether the appellants were allowed to effect alterations. Another reason advanced by the court a quo was that one of the paragraphs of the particulars of the claim was ambiguous. There is no merit in any of these reasons. Whether or not the parties agreed to the matters referred to is irrelevant to the relief claimed by the appellant. The ambiguity referred to is also irrelevant because it relates to an alleged undertaking by the respondents to pay certain fees in respect of the drawing of the agreement of lease whereas such fees are not claimed by the appellant. The court a quo should, therefore, have dismissed the respondents' appeal against the summary judgment granted in respect of claim one.

- [6] In respect of the second claim the respondents alleged that the claim had been novated, that the deed of sale could 'well be found to be null and void due to' non-compliance with the formalities prescribed in Chapter II of the Alienation of Land Act 68 of 1981 in respect of agreements for the sale of land on instalments and also 'because there has been placed, so I am informed and believe, a bar on registration and transfer of property including that forming the subject of the deed of sale, by the Registrar of Deeds, due to pending land

claims'. Chapter II applies to land used or intended to be used mainly for residential purposes and the respondents did not allege that that was the case. In so far as the bar against transfer is concerned no particulars were given. Not even the source of the information was disclosed. No case has therefore been made out that the agreement of sale was invalid. However, the appellant conceded that, in the light of the cancellation of the agreement of sale as alleged in claim three, he was not entitled to payment of the instalments that had become payable in respect of the purchase price. He furthermore conceded that he was not entitled to the legal costs in respect of the agreement of sale as no basis for such claim had been alleged. The appellant's right to the occupational consideration and the rates and taxes for the period of occupation had already accrued and the respondents disclosed no defence to these claims. It follows that the respondents' appeal to the court a quo should only have succeeded in respect of the R100 000 claimed in respect of the purchase price, the interest thereon and the R5 130 claimed in respect of the legal costs relating to the deed of sale.

[7] The respondents disclosed no defence to the claim for ejectment. Summary judgment was, therefore, correctly granted in respect of that claim and the court a quo should have dismissed the appeal against the order.

[8] In the result the following order is made:

F D KGOMO

ACTING JUDGE OF APPEAL

APPEARANCES:

FOR APPELLANT: M S Khan

ATTORNEYS: Jay Pundit and Company

Kwa Dukuza

Bezuidenhouts Attorneys

Bloemfontein

FOR RESPONDENT: No appearance

ATTORNEYS:

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