



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 January 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Du Plessis v Majiedt N O and Others (Case no 841/2023) [2025] ZASCA 4 (28 January 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, dismissing an appeal concerning the locus standi of an insolvent individual to initiate legal proceedings in his own name under the Insolvency Act 24 of 1936 (Insolvency Act). This appeal was against an order of the Free State Division of the High Court, Bloemfontein (the high court).

The appellant, Mr Tobias Casparus Du Plessis (Mr Du Plessis), was the sole member of Full Circle Projects Twenty CC (Full Circle), a company that owned a farm leased to him for business operations. In January 2021, Full Circle was liquidated and Mr Du Plessis was provisionally sequestrated in March 2021. During the liquidation process, Full Circle's property, which was subject to a continuing covering bond in favour of First National Bank Limited (FNB), was sold by the liquidators, as mandated by the creditors, to the De Klerk Familie Trust (De Klerk Trust). The sale disregarded a lease agreement purportedly concluded in August 2018 between Mr Du Plessis and Full Circle. Claiming his rights as a lessee, Mr Du Plessis sought an interim interdict restricting the transfer of the property. However, Mr Donovan Majiedt (Mr Majiedt), in his capacity as a liquidator of Full Circle, raised questions about Mr Du Plessis' legal capacity to litigate independently while under provisional sequestration.

The high court dismissed Mr Du Plessis's application and granted the counter-application brought by the De Klerk Trust, which sought a declaration that the lease agreement was null and void. The high court found that Mr Du Plessis lacked locus standi due to his provisional sequestration. It also found that the lease agreement violated the mortgage bond terms which required FNB's consent, rendering it unenforceable. The high court further held that the sale of the property was valid as no lease agreement existed to encumber the property.

The SCA held that under the Insolvency Act, an insolvent individual is divested of their estate, which vests in the appointed trustees. The Court explained that s 23(6) of the Insolvency Act stipulates circumstances where the insolvent may sue or be sued in his own name, none of which applied to Mr Du Plessis. The SCA further held that the discharge of the provisional sequestration order did not retrospectively restore his locus standi.

The SCA held that the lease agreement was void from the outset. The Court found that the continuing covering bond conferred real rights to FNB, enforceable against third parties. Since the lease required FNB's written consent, and such consent was neither sought nor obtained, the lease could not be enforced.

The Court confirmed the validity of the sale, noting that the liquidators were authorised by creditors to sell the property. The sale terms, approved by FNB, prioritised maximising returns for creditors. This objective was fulfilled by the transaction with the De Klerk Trust.

As a result, the SCA dismissed the appeal with costs.

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