

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY

1 June 2011

STATUS: Immediate

Standard Bank v The Swartland Municipality (562/10) [2011] ZASCA 106 (1 June 2011)

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

Today the Supreme Court of Appeal dismissed an appeal against the decision of the Western Cape High Court which held that the appellant bank, the mortgagee of immovable property in Malmesbury, was not entitled to an order interdicting the Swartland Municipality from proceeding with a demolition order granted by a magistrate's court.

The municipality had applied for a demolition order in respect of structures illegally erected by the owner. The owner had not responded to demands to demolish the structures himself, and did not oppose the application. He also did not pay what he owed the bank in respect of two mortgage bonds over the property. The municipality did not join the bank as a respondent, and judgment was given by default.

Fortuitously the bank had obtained an order that it foreclose on the property the day before the demolition order was granted. When it discovered that the demolition order had been granted it brought an urgent application in the high court to stay or interdict the municipality from proceeding with the demolition. It alleged that as a holder of a right in the property it should have been joined, and that it would, if the order were at least stayed, attempt to obtain a relaxation or waiver of regulations and zoning from the municipality.

The high court held that the bank as mortgagee had only a financial interest in the property and was not a necessary party to the proceedings in the magistrate's court.

It also held that the bank could not ask for an order that the structures admittedly erected illegally be allowed to stand in contravention of zoning and building regulations.

The SCA found that the bank as mortgagee should have been joined in the demolition application: it had a substantive right in the property, and was entitled to protect its value. But it held that the bank could have raised no defence to the application. Its argument that it might be able to obtain consent for the structures to stand was entirely speculative. The application was thus correctly refused, and the appeal dismissed.
