

TO DEMOLISH OR NOT TO DEMOLISH, THAT IS THE LEGAL QUESTION.... (2)

SUMMARY OF THE SUPREME COURT OF APPEAL JUDGMENT: BSB INTERNATIONAL LINK CC V READAM SOUTH AFRICA (PTY) LTD

Information

- **Citation:** (279/2015) [2016] ZASCA 58
- **Date Delivered:** 13th April 2016
- **Judges:** Ponnann, Majiedt, Swain JJA, Victor, and Kathree-Setiloane AJJA

Background

The case revolves around a dispute between **BSB International Link CC** (the appellant) and **Readam South Africa (Pty) Ltd** (the first respondent), with the **City of Johannesburg Metropolitan Municipality** cited as the second respondent. The central issue pertains to the legality of a building constructed by BSB and whether it complied with the relevant building regulations and town planning scheme.

Key Issues Addressed

- **Locus Standi**
 - The right of adjacent property owners to challenge building approvals.
- **Discretionary Powers**
 - The contrast between common law discretion regarding demolition orders and statutory discretion under the National Building Regulations and Building Standards Act (NBSA).
- **Compliance with Town Planning Schemes**
 - Whether the building adhered to the regulations set forth in the Sandton Town Planning Scheme.

Court Findings

Amendments to Court Orders

The Supreme Court of Appeal amended the previous ruling of the Gauteng Local Division by:

- **Review and Set Aside**
 - The court set aside the municipality's decision to approve the building plans as unlawful.
- **Conditions for Demolition**
 - Added a requirement that any partial demolition must be certified by a qualified engineer to ensure safety and structural integrity.

Legal Framework

The court highlighted several legal principles:

- **Common Law vs. Statutory Law**
 - At common law, courts have the discretion to order the demolition of structures that encroach on a neighbor's property. However, under section 21 of the NBSA, there appears to be no discretion once a jurisdictional fact (such as unlawful erection) is established.
- **Judicial Oversight**
 - The absence of discretion in statutory contexts can conflict with the principles of judicial oversight and the rule of law.

Key Findings

- **Coverage and Parking Violations**
 - Evidence showed that the construction exceeded the permissible coverage of 60% and failed to provide adequate parking as required by the town planning scheme.
- **Municipality's Inaction:**
 - The court criticised the municipality's failure to act on clear contraventions, attributing part of the problem to BSB's obfuscatory behavior.
- **Discretionary Power**
 - The court emphasised the need for judicial discretion in demolition orders, especially in cases where partial demolition could resolve the illegality without total destruction.

The Role of Expert Evidence

The court noted that BSB failed to adequately counter expert evidence regarding the building's coverage, which undermined its argument against the claims made by Readam.

Conclusion

The Supreme Court of Appeal's judgment reaffirmed the rights of property owners to seek legal remedies against unlawful constructions that violate town planning schemes. The court's amendments to the initial orders emphasised the necessity of due process and safety in demolition procedures, reflecting a balance between individual property rights and community interests.

Final Order: The appeal was partially upheld, with the original order amended as detailed above, and costs awarded to the respondents.

This summary encapsulates the essential elements of the judgment, illustrating the legal principles engaged and the court's reasoning throughout the case.



vdm.law

To learn more about us.

VDM SERVICES

- | | | |
|--|--------------------------------------|--|
| • ALTERNATIVE DISPUTE RESOLUTION | • DECEASED ESTATES, TRUSTS AND WILLS | • NOTARY PUBLIC AND NOTARIAL SERVICES |
| • CIVIL LITIGATION AND DEBT COLLECTION | • DIVORCE AND FAMILY LAW | • PERSONAL INJURY AND PUBLIC LIABILITY |
| • COMMERCIAL LAW | • EMPLOYMENT AND LABOUR LAW | • PROPERTY LAW AND SECTION TITLE |
| • CONVEYANCING AND PROPERTY TRANSFERS | • INSOLVENCY AND LIQUIDATION | • MARRIAGE AND MATRIMONIAL PROPERTY |