

Summary of SC92169, Catherine Ndegwa and Catherine Ndegwa and Anale Mrema, as legal co-guardians for John Mrema v. KSSO LLC and IndyMac Bank, Integrity Land Title Company Inc., John Friganza, Collector of Revenue for St. Louis County, Missouri, and St. Louis County

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen
Argued and submitted April 24, 2012; opinion issued July 3, 2012

Attorneys: KSSO was represented by Phillip K. Gebhardt of Gebhardt Real Estate and Legal Services LLC in DeSoto, (636) 586-4545; and Ndegwa was represented by Elizabeth K. Thompson, an attorney in St. Louis, (314) 961-2626.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An entity that purchased property in St. Louis County at a tax sale appeals a decision holding that it is not entitled to have title to the property. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri dismisses the appeal. The property owners filed multiple counts in the lawsuit, all arising out of the same occurrence of the tax sale and subsequent transfer of the property. Because the circuit court's order resolved only one of these counts but not the others, it did not dispose of a single, distinct "judicial unit" and, therefore, its decision is neither final nor appealable.

Judge Justine Del Muro, a judge of the 16th Judicial Circuit (Jackson County), sat on this case by special designation in place of Judge George W. Draper III.

Facts: In 1997, Catherine Ndegwa and her husband, John Mrema, bought two lots of property in Bridgeton. In 2004, they obtained a \$98,000 loan on the property from IndyMac Bank, secured by a deed of trust that contained a mistaken legal description of the property (it included only one of the two lots) but the correct street address. Although the couple asserts they paid property taxes into an escrow account with the bank, the taxes on the property were not paid for 2004, 2005 and 2006. In August 2007, the St. Louis County collector of revenue offered the property at a first tax sale. KSSO LLC acquired the property and a certificate of purchase for \$26,100, including more than \$9,200 for delinquent taxes, interest and penalties. In February 2008, Ndegwa and Mrema transferred, via quit-claim deed, their interests in both lots from themselves as individuals to themselves as trustees of the Mrema family revocable trust. In September 2008, KSSO sent Mrema and Ndegwa letters providing notice of their rights to redeem their interests in the property pursuant to section 140.405, RSMo. Because title examinations failed to reveal IndyMac's deed of trust as an encumbrance on the property, KSSO did not send notice to IndyMac. Ndegwa and Mrema did not act to redeem the property, and so in January 2009, the collector conveyed the deed for the property to KSSO, which recorded the deed in February 2009. In August 2009, Ndegwa filed suit on behalf of herself and her husband seeking various forms of relief with regard to the property, and KSSO filed an answer asserting several counterclaims. In January 2011, the circuit court granted partial summary judgment to Ndegwa, awarding quiet title (legal title) to the property to the Mrema family trust and certified its order and judgment as final with respect to the issues it resolved. KSSO appeals.

APPEAL DISMISSED.

Court en banc holds: The order here is neither final nor appealable. A final judgment is a prerequisite to appellate review. Although a final judgment resolves all issues in a case, leaving nothing for future determination, Rule 74.01(b) contains an exception for when the circuit court enters judgment for fewer than all claims or parties but certifies the judgment as final by making “an express determination that there is no just reason for delay.” Such a designation is effective only when the order disposes of a distinct “judicial unit.” A distinct “judicial unit” is defined as the final judgment on a claim and not a ruling on some of several issues arising out of the same transaction that does not dispose of the claim. An order addressing some of several alternative counts, each stating only one legal theory to recover damages for the same wrong, is not considered an appealable judgment while the other counts dealing with the same factual situation remain pending. Here, multiple counts set forth in Ndegwa’s petition are different legal theories seeking recovery based on the same underlying transaction – the tax sale of the property to KSSO. Because the circuit court’s order resolved only one but not other claims arising out of the tax sale and subsequent transfer of the deed, it did not resolve a single, distinct judicial unit and, therefore, the order is neither final nor appealable.