



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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 11 April 2022

**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

*Oppressed A C S A Minority 1 (Pty) Ltd and Another v Government of the Republic of South Africa and Others (case no 898/2020) [2022] ZASCA 50 (11 April 2022)*

**MEDIA STATEMENT**

Today the Supreme Court of Appeal dismissed an appeal against an order granted by the Gauteng Division of the High Court, Johannesburg, in terms of which a consent order made by the same court was rescinded. The rescinded court order was granted by the high court following an agreement concluded between the Oppressed ACSA Minority 1 (Pty) Ltd together with Up-Front Investments 65 (Pty) Ltd on one hand, and the Airports Company of South Africa on the other hand. The Oppressed Minority and Upfront Investments are minority shareholders in ACSA and the Government is a majority shareholder.

The court order in terms of which ACSA was ordered to buy back the shares owned by the two minority shareholders was granted with the consent of these parties. The Oppressed Minority parties had brought an application in the high court during 2015 under s 163 of the Companies Act 71 of 2008 seeking an order directing ACSA to acquire their 1.8% stake in ACSA at fair value. The application was a culmination of a longstanding dissatisfaction on the part of the Oppressed Minorities with a developmental business strategy adopted by ACSA, subsequent to their acquisition of their shares.

A few days before the hearing of the application, in July 2017, settlement discussions were held between the Oppressed Minorities' and ACSA's representatives, leading to the conclusion of a settlement agreement. The terms of the settlement agreement were then made an order of court on 1 August 2017 with the consent of the three parties. The consent order directed that a referee be appointed to value the shares held by the Oppressed Minorities and that ACSA implement the share buy-back. After the valuation was concluded, ACSA launched proceedings in the high court to challenge the valuation.

Whilst ACSA's challenge to the valuation was pending, the Government approached the high court seeking rescission of the consent order on the basis that it was erroneously granted. The argument was that neither the Minister of Transport, who represented the Government on the ACSA Board, nor ACSA's Board of Directors approved the settlement agreement as prescribed in the Public Finance Management Act 1 of 1999, the Airports Company Act 44 of 1993 and ACSA's Memorandum of Incorporation. Therefore it was not competent for the court to grant an order which was an illegality.

The high court granted the rescission application on the basis that it was just and equitable to do so, as the settlement agreement and the consent order contravened section 66 of the PFMA. In dismissing the appeal by the Oppressed Minorities, the SCA rejected their argument that ACSA and the Government had no legal standing in the appeal. The SCA found that, as the majority shareholder in ACSA and the custodian of the public's interest in ACSA, the Government had the requisite direct and substantial interest in it. The court also held that although ACSA had undertaken to abide by the judgment of the court in the appeal, submissions could be made on its behalf as it was central to the issues under consideration. The SCA then held that the evidence showed that the ACSA Board never passed a resolution adopting the settlement agreement and the Minister never consented to the agreement. Further, ACSA's office bearers and legal representatives who concluded the settlement agreement, lacked the necessary authority to do so.

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