



**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:** 1 December 2023

**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*

*Islandsite Investments (Pty) Ltd v The National Director of Public Prosecutions and Others*  
(Case no 894/2022) [2023] ZASCA 166 (1 December 2023)

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Today the Supreme Court of Appeal dismissed an appeal from a judgment of the Free State Division of the High Court, Bloemfontein (the high court) in which Musi JP granted an order declaring that attorneys appointed by the directors of Islandsite Investments 180 (Pty) Ltd (the company), which was in business rescue, did not have authority to represent the company in an application brought by the National Director of Public Prosecutions (the NDPP) to restrain assets of the company under the Prevention of Organised Crime Act 121 of 1998 (the POCA litigation). A second order made clear that the directors and shareholders had no standing to oppose the POCA litigation without the approval of the business rescue practitioners (the BRPs).

The present appeal had its genesis in the POCA litigation. The NDPP had obtained a provisional restraint order *ex parte*. The company was called upon to show cause on the return date of a rule *nisi* why the provisional restraint order should not be made final. Such a final order is not, itself, final since it serves only to preserve the restrained property until a criminal prosecution is complete and an application for confiscation of the property is brought. If neither of those procedures succeeds, the restraint order would be discharged.

In answer to the rule *nisi*, the directors appointed attorneys who then purported to represent the company by opposing the confirmation of the provisional restraint order and putting up an affidavit purporting to do so on behalf of the company. The BRPs also put up an affidavit

pointing out that there was a dispute between them and the directors as to which of them had the authority to represent the company in the POCA litigation. This prompted the NDPP to launch an application in terms of Uniform rule 7 disputing the authority of the attorneys concerned to represent the company. The basis of that application was that, since the company was in business rescue, only the BRPs had authority to appoint attorneys to represent the company. As indicated, the high court upheld the application of the NDPP.

On appeal, the directors submitted that the authority of the BRPs to represent the company should be narrowly construed and was limited to the day to day management of the company and the production of a business rescue plan. All other powers were retained by the directors in terms of the general provisions of s 66(1) of the Companies Act 71 of 2008. As such, it was the directors who were authorised to represent the company in the POCA litigation. The Supreme Court of Appeal analysed the provisions of chapter 6 of the Companies Act relating to business rescue and concluded that those provisions accorded to the BRPs the authority to represent the company in the POCA litigation. Following previous cases of this court, it was held that ‘the facilitation of the rehabilitation of a company expressly include management of property’ and that management should be widely construed. In the light of the provisions of chapter 6 of the Companies Act, it was held that the directors did not have the authority to represent the company in the POCA litigation. The appeal was dismissed. Since the directors did not have authority to appoint the attorneys concerned to represent the company, the company could not be held liable for the costs of the appeal and the directors were ordered to pay those costs personally.

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