



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

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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

Platinum Wheels (Pty) Ltd v The National Consumer Commission & Another (612/2023) [2024] ZASCA 163 (29 November 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein it upheld an appeal, with costs, against an order of the Gauteng Division of the High Court, Pretoria (the high court). The high court had dismissed the appeal by Platinum Wheels (Pty) Ltd (Platinum Wheels) against an adverse finding by the National Consumer Tribunal (the Tribunal) for contravening the Consumer Protection Act 68 of 2008 (CPA).

This matter arose from a complaint lodged by Mr Hiram Clinton Links (Mr Links) against the appellant, Platinum Wheels, a second-hand car dealership. In June 2018, Mr Links purchased a BMW M5 from Platinum Wheels. Shortly after the purchase, the vehicle began experiencing significant mechanical issues, culminating in engine failure three months after delivery. Dissatisfied, Mr Links filed a complaint with the National Consumer Commission (the Commission). Following an investigation, an inspector found that Platinum Wheels had contravened s 55(2)(a)-(d) and s 56(3)(a)-(b) of the CPA. The contraventions were referred to the Tribunal. The Tribunal found Platinum Wheels in breach of the CPA and issued various orders, including a refund. Platinum Wheels exercised its automatic right of appeal against the Tribunal's decision to the high court. The Commission lodged a cross-appeal challenging the Tribunal's refund order formulation, arguing it failed to apply s 4(2)(b)(ii) when calculating the penalty under s 112 of the CPA. The high court dismissed the appeal with costs and upheld the Commission's cross-appeal.

The issues considered by this Court were whether it had jurisdiction to hear an appeal stemming from a high court decision following proceedings from a regulatory tribunal. The SCA confirmed that it had jurisdiction to hear the appeal. It held that appeals from the high court concerning decisions of regulatory tribunals are considered as appeals from a court of first instance. Therefore, such appeals do not require special leave to be heard.

It also addressed a significant issue which arose regarding the legal practitioner who represented the Commission throughout these proceedings. Mr Ludwe Mbasu Biyana (Mr

Biyana), the Commission's in-house legal counsel, appeared before both the Tribunal and the high court. Without the knowledge of the court or any of the parties, Mr Biyana had been struck from the roll of legal practitioners shortly after commencing employment as a legal advisor to the Commission. This crucial fact only came to light later when Platinum Wheels' legal representatives conducted enquiries in Mr Biyana's conduct during the appeal process.

In deciding this issue, the Court was divided on the impact of the fraudulent representation by the Commission's legal representative. In the minority judgment, the Court held that although Mr Biyana's conduct was fraudulent and deeply concerning, it did not invalidate the entire high court judgment. The complainant (Mr Links) received no obvious advantage by Mr Biyana failing to reveal his status, and his actions had no direct bearing on the outcome of the case. The Court concluded that the high court's decision was based on a fair consideration of the merits, and remitting the case for rehearing would waste scarce judicial resources.

In the majority judgment, the Court found that fraud perpetrated by a legal representative undermines the integrity of the judiciary and public confidence in the administration of justice. The Court emphasised that the proper functioning of the courts is premised on the absence of fraud in the process. The Commission dismally failed in its due diligence processes in Mr Biyana's appointment. The Court found that in contravening the provisions of the Legal Practice Act 28 of 2014, Mr Biyana committed a criminal offence and brought the administration of justice into disrepute. Further, the Court held that irregularity in the composition of the bench means that the bench was not properly constituted.

As a result, the SCA set aside the high court order due to the tainted participation of the legal representation and remitted the matter for rehearing before a differently constituted bench. The Court ordered that the costs of the aborted high court proceedings be paid jointly and severally by the Commission and the Tribunal. This costs order included provision for the costs of two counsel. The Registrar of the SCA was directed to forward the judgment to the South African Legal Practice Council.

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