



**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: 10 June 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case; it does not form part of the judgments of the Supreme Court of Appeal

Mawerco (Pty) Ltd v Sithole and Others (322/2023) [2024] ZASCA 91

(10 June 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal by a company against the order of the high court setting aside the removal of two of the company's directors by its shareholder.

Acting in terms of the Shareholders' Agreement, the Association, a 51% shareholder in the company (the Association), appointed Mr Sithole (the first respondent) and Mr Nitwane (the second respondent) as directors of the company. The Association subsequently resolved that they be removed as directors of the company. Both Messrs Sithole and Nitwane thereafter approached the high court seeking declaratory relief, under case numbers 714/2021 and 715/2021 respectively. The applications were heard together and succeeded in the high court which set aside the removal of the 2 directors and granted further ancillary relief.

The application to the high court arose against the following backdrop: Infighting in the Association had led to an urgent application by Ms Mkhathswa and the Mawewe

Tribal Authority and the grant of an Anton Piller Order, dated 4 February 2020. In terms of that order, the Association's committee at the time was dissolved with immediate effect and persons were appointed to deal exclusively with the Association's affairs.

On 10 March 2020, the high court confirmed the Anton Piller order. It further confirmed that the Association's committee at the time had dissolved on 4 February 2020 and appointed persons to deal exclusively with the Association's affairs.

On 13 March 2020, three days after the order, the Association's management, represented by the court appointed persons resolved to remove 2 of the Association's directors. The latter aggrieved by their removal, approached the high court seeking among others the following declaratory relief:

- '1. Setting aside the suspension of the Applicant as director and Chairperson of Mawerco (Pty) Ltd;
- 2. Re-appointing the Applicant director and chairperson of the Fifth Respondent with immediate effect;. . .'

The former directors did not seek to review and the setting aside of the decision to remove them, nor did they specify precisely which of the decisions they sought to impugn. Nevertheless, the high court granted the relief sought. On appeal, it was submitted, on the directors' behalf, that it was unclear to them when the application had been launched which decisions were susceptible to review, including the dates when those decisions had been taken and by whom.

However, the Supreme Court of Appeal pointed out that Rule 53 of the Uniform Rules of Court caters for precisely such a situation; but instead of employing rule 53 to obtain the outstanding information, the directors confined themselves to declaratory relief. The Court set aside the high court's order as without reviewing and setting aside the impugned decision(s), in particular that of the Association removing the former directors the application had to fail.

ends