



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: 17 September 2025

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.

Tight Business Enterprise CC v Petrus Johannes Lordan NO & Others (356/24) [2025] ZASCA 133 (17 September 2025).

Today the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against the judgment of the North Gauteng High Court of South Africa, Pretoria (Motha and Baqwa JJ, and Yende AJ sitting as court of appeal – the full court).

The appellant, Tight Business Enterprise CC (TBE) as buyer, and the Johan Lordan Trust, of which the respondents are the current trustees, as seller, concluded a written agreement for the sale of immovable property on 5 January 2009. Clause 18 of the agreement made provision for a suspensive condition, requiring that by 30 June 2009, the Minister of Agriculture (the Minister) consent to the property being transferred separately from an adjacent property. TBE alleged that such consent was obtained on 4 June 2009. TBE further alleged that the trust did not fulfil its obligations in terms of the agreement. As a result, on 6 March 2012 TBE instituted a claim for specific performance against the Johan Lordan Trust.

The respondents raised a special plea of prescription, asserting that the agreement was subject to a three-year prescription period in terms of s 11(d) of the Prescription Act 68 of 1969 (Prescription Act); the prescription period began running on the date the agreement was signed; the three-year period expired on 4 January 2012; consequently, TBE's claims arising from the agreement had prescribed. The North Gauteng High Court of South Africa, Pretoria, per Lukhaimane AJ, dismissed the respondents' special plea of prescription with costs in November 2019. On appeal, the full court overturned this finding and ruled that prescription commenced running on the date the agreement was concluded; therefore, TBE's claim for specific performance had prescribed. Special leave to appeal against the finding of the full court was granted by the SCA in terms of s16(1)(b) of the Superior Courts Act 10 of 2013.

The issue in the present appeal was whether prescription began to run on the date of signing an agreement or on the date on which a suspensive condition was fulfilled. The SCA interpreted the suspensive condition of the contract with reliance on the principles of the interpretation of documents outlined in *Natal Joint Municipal Pension Fund v Endumeni Municipality*, that the process of interpretation is a unitary and objective exercise that regards the text, context and purpose of the document or instruments being interpreted. It emphasised the importance of not conflating the date of signature of an agreement with the date that prescription commences to run as recognised by the Constitutional Court in *Trinity Asset Management*. The Court referred to section 11(d) of the Prescription Act, which makes provision for a general prescription period of three years and s 12(1) of the Prescription Act, which determines that prescription commences to run as soon as the debt is due. The SCA held that even if the agreement in this case was valid *ex tunc* (from the beginning), because of the suspensive condition, the agreement was not enforceable from the date of signature. The debt did not fall due on that date because TBE could not enforce it.

The SCA, for the above reasons, found that the full court incorrectly held that prescription began running on the date of signature. The SCA further held that principles of prescription, as governed by the Prescription Act, are applicable to agreements containing suspensive conditions. Prescription only began to run once the suspensive condition was fulfilled, as this was when it could institute a claim for specific performance. The SCA therefore found that the date on which TBE issued summons fell within the prescribed three-year prescription period.

As a result, the SCA upheld the appeal with costs, including the costs consequent to the employment of two counsel and set aside the order of the full court by substituting it with an order dismissing the special plea of prescription with costs, such costs to include the costs of two counsel, where so employed.