



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 16 October 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.

MEC: Free State Department of Police, Roads & Transport v Goldfields Logistics (Pty) Limited (540/2023) [2025] ZASCA 152 (16 October 2025)

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant, MEC: Free State Department of Police, Roads and Transport (the MEC), against an order of the Full Court of the Free State Division of the High Court (the Full Court).

The appeal concerned the application of s 3(1)(a) of the Institution of Proceedings Against Certain Organs of State Act 40 of 2002 (the Act), which makes it obligatory to give prior written notice before legal proceedings are instituted against organs of State, if those proceedings are for the recovery of 'a debt'. In terms of s 3(2)(a), the notice must be served on an organ of State within six months of 'the debt' falling due.

Debt, as used, is defined in s 1 as:

'... any debt that arises from any cause of action –

- (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any-
 - (i) act performed under or in terms of any law; or
 - (ii) omission to do anything which should have been done under or in terms of any law; and
- (b) for which an organ of state is liable for payment of damages . . . '

Without delivering notice in terms of s 3(1)(a) to the MEC, the respondent, Goldfields Logistics (Pty) Ltd (Goldfields), issued summons against the MEC in the Free State Division of the High Court (the high court) for payment of R234 594.65. It alleged that this amount represented expenses it had incurred when it effected repairs to a provincial road in the Free State Province. The MEC is the executive head of the department, responsible for, among

others, the repair and maintenance of roads in the province. Goldfields alleged that the MEC failed to maintain the road for several years, hence it effected the repairs it alleged.

The MEC filed a special plea to dismiss Goldfields' claim based on its failure to comply with the provisions of s 3(1) of the Act. In its replication, Goldfields averred that its claim was based on *negotiorum gestio*, and was therefore not for 'damages' as envisaged in the definition of 'debt' in s 1 of the Act. Accordingly, it was not obliged to comply with s 3(1)(a).

The MEC's special plea succeeded in the high court, and instead of simply upholding the special plea, it dismissed Goldfields' claim with costs. The full court overturned that order on appeal, and agreed with Goldfields that its claim did not constitute a claim for damages.

On special leave by the MEC, in a judgment co-written by Makgoka and Unterhalter JJA and Mjali AJA, the SCA analysed the nature of a claim based on *negotiorum gestio*. It pointed out that it is essentially a claim for reimbursement of costs incurred on behalf of someone else, for their benefit. The claim for reimbursement for expenses reasonably incurred is not akin to damages. The qualification of 'debt' in the Act to one for which the State is liable to pay damages, extends debts contemplated in this Act to delictual, contractual and any other liability.

The SCA acknowledged that the manner in which the provision is structured, gives rise to anomalies, which it gave examples of. However, the SCA pointed out that the Legislature chose to express itself in the manner it did by explicitly limiting the otherwise broad wording of the definition of 'debt'. It deliberately distinguished between damages claims and non-damages claims.

It was upon the Legislature to consider whether the definition of 'debt' should be amended to accommodate the broadest possible causes of action for which a notice in terms of s 3(1)(a) should precede legal proceedings against an organ of State. It was not for a court to interpret the provision in a manner that strains its language.

For these reasons, the SCA concluded that a claim based on *negotiorum gestio* does not fit in the definition of 'debt', as it is not a claim for damages. Thus, Goldfields was not obliged to deliver a notice in terms of s 3(1)(a) of the Act before it issued summons against the MEC. As a result, the SCA dismissed the MEC's appeal with costs.

*****ENDS*****