



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

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Haralambos Prokas NO and Others v Zoviflo (Pty) Ltd (61/2024) [2025] ZASCA 18 (13 March 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal with costs, including the costs of two counsel where employed. It set aside and replaced the order of the Gauteng Division of the High Court, Johannesburg (the high court).

The appeal considered whether the respondent, Zoviflo (Pty) Ltd (Zoviflo), established its claim to ownership of 80% of the issued shareholding in the third appellant, Prinia Investment Capital (Pty) Ltd (PIC). The high court had found that it did and declared Zoviflo to be the owner of the shares, directing PIC to issue a share certificate to Zoviflo and to take all steps to effect registration of its ownership in PIC's security register. It further directed the first and second appellants, Haralambos Prokas NO (Mr Prokas) and Fotini Prokas NO, in their capacity as trustees of the Prinia Heritage Trust (the trust), to pay the costs of the application, such costs to include the costs of two counsel.

In the high court, Mr Jabulani Christopher Mepha (Mr Mepha), the sole director of Zoviflo, alleged that there were discussions over an extended period involving Mr Prokas, Zoviflo and a Mr Andrea Zissimides (Mr Zissimides), for a joint business venture to be created. To give structure to the venture, a Joint Venture Agreement (the JVA) and a Nominee Shareholders Agreement (the NSA) were prepared. The parties to the JVA were the trust, Zoviflo and ZJ Purchase Assist (Pty) Ltd (ZJ). The parties to the NSA were the trust and Zoviflo. The place where and the date when Mr Mepha's signature was allegedly affixed to the JVA and NSA were not recorded on the documents but were left blank. He alleged that he signed both the JVA and NSA on behalf of Zoviflo on 26 March 2020.

The copy of the NSA annexed to the founding affidavit bore the signature of Mr Prokas and Mrs Joalette Prokas on behalf of the trust, but the place of signature and the date were left blank. Provisions appearing in the NSA included that: the trust acknowledged that, notwithstanding the registration of the shares into its name, it had no beneficial interest in and to the shares; the trust would not be entitled to any dividends or any other distributions; the trust confirmed that Zoviflo was the *de facto*, true and beneficial owner of the shares; the trust agreed to deliver to Zoviflo the share certificates in respect of the shares together with a share transfer form duly signed but blank as to the date and name of the transferee, and authorised a Mr Kyriacou to sign any transfer form of the shares out of the name of the trust. The NSA provided that it constituted the entire agreement between the parties with regard to the matters dealt with therein.

According to the trust, the total issued shareholding in PIC, at all material times, was wholly owned by the trust. Mr Prokas, on behalf of the trust, had dealings with Mr Georgiou since 2018 with a view to creating a private property fund as an investment venture (the fund). The fund would acquire various properties, and/or the shares in property owning companies. Mr Zissimides, representing ZJ, became involved in the discussions regarding the fund during January to March 2019. Mr Prokas pressed Mr Georgiou for an agreement to regularise and formalise the relationship between Mr Georgiou, the trust and ZJ going forward. Mr Prokas and Mr Zissimides were in broad terms agreeable to an 80/20 split of the shareholding in favour of Mr Georgiou, if the latter introduced further unencumbered properties to the envisaged fund.

Mr Prokas was subsequently handed a draft of the JVA. That was the first time Mr Prokas saw the JVA. He had never heard of Zoviflo before – it was mentioned for the first time in the JVA and upon requiring more details about Zoviflo, no mention was made of Mr Mepha. Although reluctant to sign due to dissatisfaction with several terms of the proposed JVA, he signed the JVA at the insistence of Mr Kyriacou, stating that he had no reason to believe that the copy of the JVA would be handed to any other parties to sign and create an agreement. He viewed the JVA as a working document.

Mr Prokas conveyed his objections and concerns regarding the JVA to Mr Georgiou. He also recorded these in an email addressed to Mr Georgiou's personal assistant on 30 March 2020. Mr Georgiou's assistant responded to Mr and Mrs Prokas and Mr Zissimides per email some six weeks later on 12 May 2020. In this email, she attached a redrafted JVA (the second JVA) which contained various amendments as Mr Prokas had required. She asked the addressees of her email to read through the second JVA and confirm that all changes had been made to their satisfaction whereafter it could be signed. The second JVA was signed by the trust and ZJ on 12 May 2020. No version thereof signed by Zoviflo had been produced.

None of the terms of the first JVA were carried out and none of the shares was transferred. Mr Prokas had never dealt with Mr Mepha and was never advised of the signature of the NSA by Zoviflo. He learnt of the supposed signature thereof by Mr Mepha only when it was served on him more than two years later during 2022.

On or about 6 October 2020 Mr Prokas, his wife, and Mr Zissimides met and passed a resolution, which was signed by all present, that the joint venture contemplated in the second JVA too was, for a variety of reasons, null and void. At that stage neither the first JVA, nor the second JVA, nor the NSA which was based on the first JVA had been signed, with the result that none of these agreements had come into existence. The trust accordingly contended that, as no valid and binding JVA was concluded, and as a result of it not being implemented, Zoviflo was not entitled to the relief claimed based on the NSA. The transfer of the shares was entirely dependent on there being a joint venture in the first place, and the NSA would be linked to a valid JVA.

The issues before the SCA related to: (a) Whether the NSA was enforceable independently of the conclusion and implementation of the JVA; (b) Whether, assuming that they were interdependent, a binding and enforceable JVA was nevertheless concluded and implemented, and ancillary thereto, whether the NSA was validly concluded; and (c) Whether the alleged conclusion of the NSA and JVA by Mr Mepha, on behalf of Zoviflo, was properly authorised.

In addressing the first issue before it, the SCA held that the two agreements were clearly interdependent as, without the joint venture, there would be no purpose to have the PIC, to administer the Portfolio. If there was no valid JVA, then the common underlying assumption, on the basis of which the parties contracted with each other, fell away and to seek to enforce the one agreement when the other had failed would be unconscionable and contrary to what the purpose of the agreements had been in the context in which they were negotiated.

On the second issue, the SCA held that, in assessing the evidence in totality, Zoviflo had not established that there was a valid NSA or JVA which could be enforced and, accordingly, it was not necessary for

the Court to consider the third issue of Mr Mepha's authority to have signed the agreements on behalf of Zoviflo at the time when he alleged he did so.

On the alternative argument raised by Zoviflo that it owned the 80% shares even prior to any of the agreements being signed, and that the NSA recognised that the shareholding was owned by Zoviflo, the SCA concluded that, that argument could not succeed as Zoviflo had provided no factual basis for its contention that it had already become the owner of the 80% shares before the NSA was purportedly concluded. The acknowledgement in the NSA that Zoviflo was the *de facto* and beneficial owner was insufficient to discharge the onus of establishing ownership, as this was a conclusion of law and could not be established by a mere assertion but required the facts to be pleaded to establish ownership. The argument was also in conflict with the evidence of Mr Mepha.

In the result, the SCA made an order upholding the appeal with costs, including the costs of two counsel where so employed and setting aside and replacing the order the order of the high court.

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