



**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:** 15 December 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*

*Christensen N O and Another v De Magalhaes (Case no 763/2024) [2025] ZASCA 193 (15 December 2025)*

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Today the Supreme Court of Appeal (the SCA) delivered a judgment in which it granted the trustees of the insolvent estate of Mr Antonio de Magalhaes (the insolvent) special leave to appeal, upheld their appeal, and set aside the order of the full court of the Gauteng Division of the High Court, Johannesburg (the full court).

The applicants in this matter were the duly appointed trustees of the insolvent estate of Mr Antonio de Magalhaes (the insolvent), who was married out of community of property to the respondent, Mrs Lilianne de Magalhaes (the wife). The dispute centered on whether the wife was entitled to the release from attachment of funds in her bank account, comprising of the balance remaining from the proceeds of the sale of an immovable property in Simonstown (the property), which she claimed belonged to her. The high court granted the application of the wife, brought in terms of s 21(2)(c) of the Insolvency Act (the Act), for the release of the funds.

The full court dismissed the appeal of the trustees against the order of the high court. It agreed with the high court that the wife had discharged the onus of proving her ownership. The full court found that the mortgage bond payments made by the insolvent between 2013-2014 and 2018 were understandable, given the illness of the wife and the insolvent's common law duty of support towards her. It found further that, because of the passage of time since acquisition of the property in 2001, it was reasonable that the wife was unable to produce proof of how she funded the purchase of the property from her own separate resources. Furthermore, given that the bond was only registered in 2004, it was unlikely that the wife would have succeeded in obtaining registration of the property in her name unless the purchase price had been paid or its payment secured.

The SCA held that the central issue was whether the wife had discharged the onus placed on her by s 21(2)(c) of the Act, to prove that she had acquired the property (and thus the proceeds of its subsequent sale) by title valid as against the creditors of the insolvent. The SCA reiterated that the object of s 21(2)(c) of the Act is to ensure that property which belongs to an insolvent ends up in the insolvent estate for the benefit of creditors, and that the onus rests on the solvent spouse to prove that such property should be excluded therefrom. The SCA emphasised that ownership evidenced only by registration of title in the Deeds Registry is insufficient, since a further element must be proven, namely the underlying real agreement in relation to that outward manifestation of ownership.

The SCA accordingly found that the wife's primary reliance on registration of title was not enough. It also held that the other evidence put up by the wife was selective, evasive, unpersuasive and at times contradictory. The SCA noted that she failed to explain the source of the purchase price; gave conflicting accounts of her income;

and did not adequately address evidence about the payments made by the insolvent towards the bond over the property. The SCA noted that it had been open to the wife to obtain an affidavit from the insolvent supporting her version, and that his silence spoke for itself.

The SCA held that the full court regrettably appeared to have determined the issue by proceeding from the erroneous premise that the defence of the trustees was collusion between the insolvent and his wife, whereas this had never been their stance. The trustees had contended that from the outset, when the property was purchased in 2001, the couple likely agreed and understood that the insolvent was the true owner, when regard was had to the evidence supporting this inference. Accordingly, their defence was not related to the timing of the insolvency. The SCA pointed out that one must not conflate the remedy available to a solvent spouse in s 21(2), with that available to a trustee in s 32 of the Act, which provides a statutory mechanism for a trustee to institute proceedings to set aside an impeachable transaction. The SCA held that the wife had not discharged the onus placed on her to prove title valid as against the insolvent's creditors.

As a result, the SCA set aside the order of the full court and replaced it with an order dismissing the application of the wife.

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