



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 December 2025
Status: Immediate

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Badenhorst N O v Manyatta Properties Close Corporation and Others (Case no 049/2024) [2025] ZASCA 194
(17 December 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a judgment of the Mpumalanga Division of the High Court, Mbombela (the full court), sitting as a court of appeal. The application for special leave to appeal is granted only in respect of the orders of costs *de bonis propriis* (the costs orders), otherwise the application for special leave to appeal is refused. The appeal in respect of the costs orders is refused.

The dispute between the parties involves the sale and transfer of Portion 33 of the Farm Rietfontein in Mpumalanga (the property) from the first respondent, Manyatta Properties Close Corporation (Manyatta), to Nikifon (Pty) Ltd (Nikifon), the fourth respondent. The deed of sale was signed on 18 September 2014 by the second respondent, Phillip Cornelius de Witt (Mr de Witt), who held 50 percent of the member's interest in Manyatta. The registered holder of the remaining 50 percent interest in Manyatta was Mr de Witt's cousin, Mr Ernst Hendrik de Witt (the deceased), who died on 21 March 2010. Nikifon's director, Joao Richards (Mr Richards), signed the deed of sale on its behalf and registration of the transfer to Nikifon was effected on 24 October 2014.

On 24 March 2021, Mr J J Badenhorst, the applicant in the matter before this Court, acting *nomine officio* in his capacity as executor of the deceased estate, instituted an application in the high court which he sought to impugn the sale and transfer of the property to Nikifon. The high court dismissed the applicant's claim, as did the full court subsequently on appeal. The application for special leave to appeal was referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013.

The SCA, in dealing with the merits of special leave to appeal, had to determine whether the applicant had established the grounds necessary to justify the grant of leave, by this Court, to appeal the full court's order

dismissing his challenge to the high court's order on the merits of his application. The applicant needed to demonstrate that the appeal raised a substantial question of law; or if it raises only questions of fact, that they are of great importance to the parties or to the public; alternatively, that the prospects of success are so strong that the refusal of leave would probably result in a manifest denial of justice.

The SCA found that the applicant had failed to establish a case for why special leave to appeal should be granted by this Court against the full court's dismissal of the appeal on the merits of the high court application. This Court found that Nikifon satisfied the requirements of s 54(2) of the Close Corporations Act 69 of 1984 (the CC Act). Consequently, the sale and transfer of the property were legally binding on Manyatta and Mr de Witt's *de facto* absence of authority had no effect on the sale and transfer.

The remaining question that the SCA dealt with was whether special leave to appeal is warranted in respect of the order of costs *de bonis propriis* against the applicant. The SCA found that there were material shortcomings in the manner in which both the high court and the full court dealt with the question of the *de bonis propriis* costs award. This unfortunate state of affairs undermined the applicant's right under s 34 of the Constitution to a fair hearing. The high court failed to consider the applicant's submissions and the full court's failure to deal with the applicant's appeal against the costs order was also found to be inexplicable. This Court thus found that on the issue of the costs order *de bonis propriis*, special leave to appeal was justified.

The SCA further dealt with the question whether there was merit in the appeal against the costs order. This Court held that it is trite that a court on appeal has limited power to interfere with a costs order made by the court below and may only do so where the lower court did not exercise its discretion judicially. This Court also found that the high court did not commit a misdirection in concluding that the applicant's conduct materially deviated from what is expected of a professional in his position, and that it warranted censure in the form of *de bonis propriis* costs. In the circumstances, this Court held that it is not persuaded that the applicant had established that there were grounds for the full court to interfere with the punitive costs order made by the high court in respect of the respondents who were parties before this Court. This Court did however find that the high court committed a misdirection in including Mr de Wet in the costs order, and the full court ought to have ordered the necessary amendment to the high court order. Save in this respect, the appeal against the costs order of the high court failed.

The SCA, in the minority judgment, agreed with the conclusion reached by the majority judgment, however the minority judgment respectfully disagreed with part of the costs orders and the formulation of the relief. The minority held that, in the exercise of judicial discretion on costs, no award of any costs should be made in favour of the conveyancing respondents in respect of the proceedings in the high court. An award of costs in their favour could risk being construed as some implied approval of their conduct. *A fortiori* (all the more so), there are no special circumstances which justify an award of costs on the attorney and client scale *de bonis propriis*.

As regards the costs of the appeal before this Court, the minority holds that there is nothing material which would justify a punitive costs award, whether *de bonis propriis* or on the attorney and client scale. Indeed, there was an express disavowal by the applicant of any reliance on the allegations of fraud. An award of party and party costs

in favour of Nikifon, Odussee and the conveyancing respondents, on the basis of their substantial success, as had also been ordered by the full court in respect of the appeal heard by it, is appropriate.

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