



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

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

Johannes Frederick Gouws N O and Others v Johannes Petrus Erasmus Swarts N O (1250/23) [2025] ZASCA 48 (25 April 2025)

Today, the Supreme Court of Appeal (SCA) upheld an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court), per Munzhelele J. The issue in that appeal was whether a valid and binding agreement was concluded between the WM Gouws Family Trust (WM Gouws Trust) and the Johan Swarts Family Trust (JS Swarts Trust) at the shareholders' Annual General Meeting of JDJ Holding Company (Pty) Ltd (JDJ) held on 20 March 2020 (the AGM). The respondents, the trustees of the JS Swarts Trust, contended that it was, while the appellants, the trustees of the WM Gouws Trust, contended that it was not. In terms of the alleged agreement, WM Gouws Trust sold its shares in JDJ and Evening Shade Properties 46 (Pty) Ltd (Evening Shade) to JS Swarts Trust for R25 million. The high court ruled in JS Swarts Trust's favour. WM Gouws Trust approached the SCA with leave of the high court.

Johannes Frederick Gouws (Mr Gouws), Johannes Petrus Erasmus Swarts (Mr Swarts) and Douw Kruger (Mr Kruger), collectively 'the founders', formed a successful business enterprise that operated through JDJ, Evening Shade and other subsidiary entities. The founders' relationship broke down irretrievably to the extent that they elected to unbundle their interests in the business enterprise. Mr Kruger secured Olympus Trust's interests through a court order, directing JDJ to purchase its shares at a purchase price to be determined through an auditor's valuation. Thereafter, Mr Gouws circulated a proposal to Mr Swarts and Mr Kruger (who joined fray even though having obtained the foregoing order) with three options regarding how their business interests may be unbundled. The founders at the AGM discussed the proposal leaning towards option three, to which Mr Gouws and Mr Swarts agreed that WM Gouws Trust would exit the business by selling its shares in JDJ, and JS Swarts Trust would continue with the business. What was in dispute was whether the parties reached an agreement regarding the

price, and more specifically, its tax implications. Mr Gouws argued that his understanding was that JDJ would pay R25 million to WM Gouws Trust after settling the tax liability that arose from the sale. The parties also mooted the prospect of JS Swarts Trust being the buyer. Mr Swarts argued that JS Swarts Trust was not to settle the tax liability that arose from the sale. WM Gouws Trust approached the high court for an order giving effect to its version. The JS Swarts counter-applied for an order to the effect that WM Gouws Trust be directed to transfer its shares in JDJ and Evening Shade to JS Swarts against a payment of R25 million from JS Trust. The counter application was referred to oral argument. The parties agreed to a draft order to be made order in the event the counter application failed (the Draft order). They furnished the high court with the agreed order which they still seek in the event the appeal is upheld.

The high court found that JS Swarts Trust accepted option 3 with the conditions set out therein, with the intention to establish a contractual relationship; that the parties reached consensus on the R25 million purchase price; option 3 was silent on the tax implications of the purchase price; and tax was a non-essential element of the agreement. It held that Mr Gouws had incorrectly asserted through his attorney that the agreed price was R25 million, inclusive of tax and nothing at the AGM transpired to support a finding that the agreement reached was provisional in nature, subject to suspensive conditions or further negotiation.

In the SCA, WM Gouws Trust contended that the high court erred in its findings and persisted with the contentions it made in the high court.

The SCA held that the high court's finding that option 3 was silent on tax and was not discussed at the AGM was inconsistent with its finding that the agreed R25 million purchase price is inclusive of tax; while it was correct that tax was not an *essentialia* of the agreement, concession to this by Mr Gouws did not nullify his evidence that he wanted R25 million after tax. The concession demonstrated that there was absence of the meeting of minds on the price. Therefore, it was inescapable that in rejecting Mr Gouws' version and accepting Mr Swarts', the high court erred. The SCA concluded that no valid and legally binding agreement was concluded at the AGM. The appeal was thus upheld, and effect was given to the draft order.

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