



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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Auckland Park Theological Seminary v Wamjay Holding Investments (PTY) Ltd (041/2024) [2025] ZASCA 65 (20 May 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment and order of the Gauteng Division of the High Court, Johannesburg (the high court) per Friedman AJ with leave of this Court.

The University of Johannesburg (UJ), formerly known as the Randse Afrikaanse Universiteit (RAU), is the owner of the erf situated at 51 Richmond Avenue, Auckland Park. UJ entered into a long-term lease agreement with Auckland Park Theological Seminary (ATS), which was registered against the title of the property on 20 December 1996. The contract had a specific purpose, namely to be used for building a religious based primary and high school. Instead of building the religious school, ATS concluded a cession agreement with Wamjay Holding Investments (Pty) Ltd (Wamjay), which was executed against payment of a consideration of R6.5m by Wamjay to ATS. The notarial deed of cession of the lease between ATS and Wamjay was registered with the Registrar of Deeds in October 2011. UJ was not informed of and did not consent to the cession. UJ came to learn about the cession and cancelled the agreement between it and ATS, by sending a letter dated 5 October 2012 to ATS and Wamjay. Both ATS and Wamjay refused to accept that UJ had a right to cancel the long-term lease agreement it had with ATS. This led to UJ instituting eviction proceedings against ATS and Wamjay and also sought relief to cancel the registration of the long-term notarial lease against its title deed. Protracted litigation followed from the high court up to the Constitutional Court on various issues, including the validity of the cession agreement. The Constitutional Court ultimately held that the rights of UJ were personal in nature and not freely cedable. The judgment and order of the Constitutional Court, delivered on 11 June 2021, prompted Wamjay to institute proceedings against ATS before the high court claiming, based on unjustified enrichment, the repayment of the R6.5m. The high court held that ATS was liable to Wamjay in the amount of R6.5m together with interest and costs.

The issues before the SCA were: (a) when prescription began to run for the purposes of s 12(3) of the Prescription Act 68 of 1969 (the Prescription Act); (b) whether the exception to s 12(3) of the Prescription Act, in professional negligence claims against practitioners, finds application in this case; and (c) whether the enrichment claim based on the *condictio indebiti* has been proven. The SCA dealt with questions (a) and (b). The Court's finding on these two issues disposed of the necessity to consider (c).

The SCA noted that the high court, contrary to the pleaded case, relied on s 12(1) of the Prescription Act to come to its findings and order. While the SCA did not decry the approach of the high court in dealing with the issue with reference to s 12(1), it observed that the high court failed to appreciate the interplay between ss 12(1), 12(2) and 12(3) of the Prescription Act.

The SCA held, with reference to *Links v Department of Health*, which referred with approval to *Truter and Another v Deyssel*, as well as the recent decision by the SCA in *Van Heerden & Brummer Inc v*

Bath, which referred with approval to a passage in *Fluxmans Inc v Levensons*, that a debt is due in this case when the creditor acquires a complete cause of action for the recovery of debt and that legal conclusions do not form part of material facts to constitute a cause of action. On 5 October 2012 Webber Wentzel Attorneys, acting for UJ, addressed a letter to ATS and Wamjay communicating its acceptance of the repudiation of the long-term lease agreement between it and ATS. The SCA held that this triggered the running of prescription. Prescription started to run on this date and not only when the Constitutional Court delivered its judgment, as Wamjay contended.

The SCA further held, that as a general rule, legal conclusions do not constitute facts and knowledge of legal conclusion is not required by a creditor for purposes of s 12(3). With reference to a series of cases on professional negligence (including *Loni v MEC for Health, Eastern Cape Bisho and Le Roux and Another v Johannes G Coetzee & Seuns and Another (Le Roux)*) the SCA found that *Le Roux* does not support Wamjay's case, because there is nothing to bring the dispute between Wamjay and ATS within the realm of professional negligence, as in the case of legal practitioners. The Court concluded that the claim had prescribed and it was therefore unnecessary to deal with the issue of enrichment

As a result, the SCA upheld the appeal and substituted the order of the high court with an order dismissing the application with costs, which costs include the costs of two counsel where so employed