



**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:** 30 May 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*

*Industrial Development Corporation of South Africa Limited and Another v Kalagadi  
Manganese (Pty) Ltd (661/2024) [2025] ZASCA 70 (30 May 2025)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal with costs including those of two counsel, against an order of the Gauteng Division of the High Court, Johannesburg (high court).

In September 2017, the first applicant, the Industrial Development Corporation of South Africa Limited (IDC) and the second applicant, the African Development Bank (AfDB) (respectively, the applicants) extended various loan facilities to the first respondent, Kalagadi Manganese (Pty) Ltd (Kalagadi) for its Northern Cape manganese-mining operations. The loans were governed by the Common Terms Agreement. Clause 40.2.1 of the Common Terms Agreement provided that any dispute ‘arising out of or in connection with’ the agreement shall be referred to, and finally resolved by, arbitration. When Kalagadi defaulted on its repayment obligations under clause 5 of the Common Terms Agreement, the applicants issued notices of default and accelerated the debt pursuant to clause 24.30.1. On 29 April 2020, the IDC instituted business rescue proceedings against Kalagadi in terms of s 131(1) of the Companies Act 71 of 2008 (the business rescue application). At the time, Kalagadi was indebted to the IDC in an aggregate amount of R3 010 341 967.01. This application was struck from the roll for want of urgency.

Kalagadi and its two majority shareholders, Kalahari Resources (Pty) Ltd and Kgalagadi Alloys (Pty) Ltd (the second and third respondents), who had provided guarantees under separate Guarantee, Pledge and Cession Agreements, responded by bringing an application in the high court to, *inter alia*, compel the applicants to accept a restructuring arrangement of the debt (the Kalagadi application). Kalagadi launched a further application seeking a joint hearing of the business rescue and the Kalagadi applications which was granted by the high court on 22 July 2021. However, the high court only heard preliminary objections raised for both applications and not the merits. On 6 September 2023, the high court dismissed the applicants' preliminary objections finding that (a) the arbitration clause did not apply because the Kalagadi application was responsive to the business rescue matter, (b) the AfDB's conduct waived its immunity in terms of the Diplomatic Privileges and Immunities Act 37 of 2001 (the Immunities Act), and (c) the respondent parties have a right of access to court under the Constitution. The applicants applied to the high court for leave to appeal this order. It was refused. They subsequently applied to this Court for leave to appeal.

The issues on appeal were whether clause 40.2.1 of the Common Terms Agreement constituted a peremptory arbitration agreement, depriving the high court of jurisdiction over contractual disputes. And further, whether the AfDB enjoyed immunity from South African courts under the Immunities Act and thus divested the high court of jurisdiction.

The SCA held that clause 40.2.1 was peremptory, as the word 'shall' signified that clause 40.2.1 provided no scope for the exercise of a discretion. It also imposed no internal substantive limitation on the class of disputes that must be referred to arbitration. This was the clear intention of the parties to arbitrate all contract disputes. The Court found that the high court had misapplied an 'interests of justice' test under the Arbitration Act 42 of 1965 (the Arbitration Act) instead of applying Article 8(1) of Schedule 1 to the International Arbitration Act 15 of 2017 (the IAA), which required a stay and referral to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed. The Court concluded that the Kalagadi and business rescue applications were distinct: the Kalagadi application was not dependent on the outcome of the business rescue application and the relief sought was based on purported breaches of the Common Terms Agreement.

Regarding the immunity challenge, the SCA found that the AfDB's immunity was entrenched in South African law through the Immunities Act without requiring further parliamentary

ratification, and that clause 40.2.9 of the Common Terms Agreement preserved the AfDB's immunity from court proceedings but not arbitration proceedings in terms of clause 40.2.1 of the Common Terms Agreement.

As a result, the SCA upheld the appeal and set aside the high court's order with costs.

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