



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: 18 July 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.

Crous v Wynberg Boys High School and Others (200/2024) [2025] ZASCA 107 (18 July 2025)

Today, the Supreme Court of Appeal (the Court) upheld an appeal against an order of the Gauteng Division of the High Court, Pretoria (the high court). The issue in the appeal was whether mere membership of a Close Corporation was sufficient to hold all members personally liable for the debts of a close corporation where the juristic personality of the close corporation was abused, irrespective of the member's contribution to the abuse.

The high court found that the third respondent, Wynberg Boys High School (the school), had suffered loss as a result of gross abuse of the juristic personality of a close corporation, Eastco Travel CC (the close corporation), which conducted a business of a travel agency. The appellant, Mr Crous and the third respondent, Ms Fourie, the only members of the close corporation, are father and daughter. Ms Fourie was responsible for the day-to-day management of the close corporation. She defrauded the school as part of a scam targeting people who wished to purchase air travel tickets. It was not disputed that Mr Crous did not play any role in the management of the close corporation, let alone the abuse of the juristic personality of the close corporation which led to the school's loss. His involvement with the close corporation was limited to providing Ms Fourie with the initial capital injection. Long before the fraudulent scheme by Ms Fourie, he had written a letter to Ms Fourie, 'resigning' from the close corporation and requesting that his name be removed as a member of the close corporation.

The high court found that it was immaterial that Mr Crous had not contributed to the abuse. As long as he remained a member, he bore a fiduciary duty to ensure that the affairs of the close corporation were not run in a manner as to occasion loss to those who do business with the close corporation. The high court granted an order for the provisional liquidation of the close corporation and ancillary relief. Relevant to the appeal, the high court declared the close corporation not to be a juristic person for its liability towards the school. It found that Mr Crous and Ms Fourie had abused the juristic personality

of the close corporation. Accordingly, the high court ordered Mr Crous and Ms Fourie, jointly and severally, to pay the school R638 880, and the costs of the application. Mr Crous' appeal was limited to these parts of the high court's order.

On appeal, the Court considered the relevant provisions of the Close Corporations Act 69 of 1984 (the Act). It observed that the default position is set out in s 2(3) under Part I of the Act, which provides that the members of a corporation shall not merely by reason of their membership be liable for the liabilities or obligations of the corporation. The exceptions to this default position are set out in ss 63, 64 and 65, under Part VIII of the Act.

The Court observed that a reading of these provisions indicates that for personal liability to arise against a member or any other person, such a member or person must have contributed to the impugned conduct. It considered section 65, on which the school based its case against Mr Crous. The Court held that section 65 provides for personal liability of members where there is 'gross abuse' of the juristic personality of the corporation as a separate entity. Under those circumstances, the court may declare that the corporation is to be deemed not to be a juristic person in respect of such rights, obligations or liabilities of the corporation, or 'of such member or members thereof, or of such other person or persons, as are specified in the declaration, and the Court may give such further order or orders as it may deem fit in order to give effect to such declaration.'

The Court concluded that to impose liability in terms of s 65 on a member of a close corporation, their conduct must amount to gross abuse, or contribute thereto. It is not enough that they were members of the close corporation. Thus, the participation in the actual impugned conduct is required. On this basis, the Supreme Court of Appeal found that the high court erred in its holding that mere membership of a close corporation, without more, triggered the application of s 65 of the Act.

The Court also rejected the high court's conclusion that the mere membership of a close corporation imposed a fiduciary duty on a member to ensure that the affairs of a close corporation are managed in a manner not detrimental to members of the public. The Court pointed out that the fiduciary position of members is regulated, in sections 42 to 52 of the Act under the heading 'Internal Relations'. Section 42 provides that each member of a corporation shall stand in a fiduciary relationship to the corporation. The Court held that this limits the fiduciary duty of members to internal relations, and not to external parties. In other words, a member of a close corporation does not owe any fiduciary duty to external parties.

Accordingly, the Court upheld the appeal with costs, including the costs of two counsel. It set aside the impugned part of the high court's order and replaced it with one in terms of which the application against Mr Crous is dismissed with costs.

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