



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: 25 September 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

Godfrey Goliath Nicholls N O and Others v Magdalena Gaybba and Another (865/2023)
[2025] ZASCA 138 (25 September 2025)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by the trustees of the Nicholls Vrugteverspreiders Trust (the Trust) against a decision of the Western Cape Division of the High Court, Cape Town (the high court) which had dismissed their claims on the basis of a special plea of prescription.

The dispute concerned allegations that Ms Magdalena Gaybba (Ms Gaybba), the sole member of HTI Technologies CC, was involved with her late husband in a fraudulent scheme that resulted in misappropriation of funds from the Trust. The Trust instituted three claims against Ms Gaybba – her liability under s 26 of the Close Corporations Act 69 of 1984 (CC Act); alternatively, personal liability under s 64 of the CC Act for reckless or fraudulent trading; and, further alternatively, damages in delict as a co-wrongdoer. The high court upheld a special plea of prescription, finding that the claims had lapsed under the Prescription Act 68 of 1969 (the Prescription Act).

On appeal, the SCA held that a claim under s 64 of the CC Act is not a ‘debt’ as contemplated by the Prescription Act. Such a claim only arises once a court, in the exercise of its discretion, declares a member personally liable. Accordingly, the Trust’s s 64 claim was not susceptible to prescription. The Court further found that the Trust’s delictual claims had not prescribed. It held that the trustees only acquired the necessary knowledge of the facts giving rise to those claims after obtaining HTI’s bank statements during insolvency proceedings, which occurred within three years of issuing summons.

The appeal was accordingly upheld with costs. The order of the high court was set aside and replaced with an order dismissing the special plea of prescription.