



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: 9 June 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

The Rock Foundation Properties & Another v Chaitowitz (1038/2023) ZASCA 82 (9 June 2025)

Today the Supreme Court of Appeal (SCA) struck off an application by the Rock Foundation Properties and Ms Esther Ndegwa, seeking reconsideration of a previous refusal to grant leave to appeal. The application arose from a petition challenging a judgment of the Gauteng Division of the High Court, Johannesburg (high court).

The matter involves a dispute over a set of agreements involving a property formerly owned by Ms Ndegwa, who had defaulted on her mortgage with Absa Bank and sought investors to avoid a forced sale. She sold the property to Dosvelt Properties (Dosvelt) for R3 million, with an arrangement allowing her continued occupation and giving her company the Rock Foundation Properties (the Rock Foundation) development rights and a purchase option.

After the Rock Foundation defaulted on rent, Dosvelt cancelled both the lease and the option agreement. Ms Ndegwa challenged the validity of the agreements in the high court, arguing they were simulated and void under the National Credit Act 34 of 2005, seeking the return of the property without repaying the purchase price. Dosvelt opposed and counterapplied for eviction and confirmation that the option had lapsed. The high court ruled in favour of Dosvelt and denied leave to appeal. Two judges of the SCA refused leave to appeal too.

The applicants applied to the President of the SCA to exercise her powers of reconsideration under s 17(2)(f) of the Superior Courts Act. In her application she relied on the assertion that exceptional circumstances warranted a reconsideration because the transactions were akin to the discredited 'Brusson-type' schemes that have been declared invalid. However, she no longer relied on this argument when the application was heard before the SCA. The question was then whether she had established any remaining 'exceptional circumstances' to found the SCA's reconsideration jurisdiction. The SCA held there were no exceptional circumstances and that the case involved a straightforward commercial arrangement. Consequently, it struck the application from the roll.