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: 21 July 2026

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

Swanvest 328 (Pty) Ltd and Others v Ensemble Hotel Holdings (Pty) Ltd and Others (232/2025) [2026] ZASCA 101 (21 July 2026)

Today the Supreme Court of Appeal (SCA) upheld in part an appeal and a cross-appeal in a dispute among the three shareholders of Legacy Hotels and Resorts (Pty) Limited (Legacy Hotels), a private company owning and managing a portfolio of hotels in South Africa and Namibia. Its shareholders are Swanvest 328 (Pty) Limited (19.39 percent), Legacy Management Holdings (Pty) Limited (40.84 percent) and Ensemble Hotel Holdings (Pty) Limited (39.79 percent). The shareholders accepted that their relationship had broken down irretrievably and had to be ended. The dispute concerned the mechanism by which their separation was to be achieved.

Ensemble is ultimately Libyan-owned. Its shareholding traces through a chain of entities to the Libyan Investment Authority, Libya's sovereign wealth fund. In 2011 the United Nations Security Council, acting under Chapter VII of the Charter, adopted Resolutions 1970, 1973 and 2009, which imposed and then partially eased an asset freeze affecting the Libyan entities standing behind Ensemble.

The Gauteng Division of the High Court, Johannesburg (Adams J) had ordered that the entire issued share capital of Legacy Hotels be sold by private auction between the two shareholder groups, and had dismissed a counter-application by the majority shareholders for a repurchase of Ensemble's shares at a fair value determined by an independent expert. The appeal and cross-appeal raised three issues: whether the competing claims satisfied s 163 of the Companies Act 71 of 2008, which affords relief from oppressive or unfairly prejudicial conduct; whether Ensemble's shares were frozen assets under the Security Council resolutions as given domestic effect by the Financial Intelligence Centre Act 38 of 2001 (FICA), so that they could not lawfully be sold; and what the appropriate mechanism for severing the shareholders' relationship was.

On the first issue, the SCA held that Ensemble had established oppressive conduct falling within s 163(1)(c) of the Companies Act, arising from the pattern of refusal and delay in giving its nominated director access to company information necessary to discharge his fiduciary duties. The majority shareholders' counterclaim under s 163(1)(b), founded on the reputational difficulties said to flow from Ensemble's Libyan-linked ownership, was rejected: an inherited ownership structure that predated the relationship and flowed from an international sanctions regime did not amount to oppressive conduct directed at the majority.

On the second issue, the SCA held that Ensemble's shares were frozen property. They were indirectly owned or controlled by the designated Libyan entities and were held outside Libya as at 16 September 2011, and so remained frozen under the resolutions as given immediate domestic effect by s 26A(1) of FICA. The High Court had erred in treating a committee implementation notice as confining the freeze to assets held directly in the names of the designated entities; a committee could not amend a Chapter VII resolution, and the resolutions expressly extended the freeze to assets owned or controlled directly or indirectly. Any dealing in the shares was therefore prohibited by s 26B(2) of FICA unless permitted by the Minister of Finance under s 26C.

It followed that neither a private auction of the shares nor a sale of Legacy Hotels' business as a going concern could lawfully be ordered, since each would result in frozen property or its proceeds passing to or for the benefit of the sanctioned entities. The appropriate remedy, in the exercise of the court's wide discretion under s 163(2), was for Legacy Hotels to repurchase Ensemble's shares at a fair value determined by an independent expert, achieving a complete separation of the shareholders. Because that remedy also involves a dealing in frozen property, the SCA made its implementation conditional upon the parties obtaining the ministerial permission or authorisation required under ss 26B and 26C of FICA, read with the applicable resolutions.

The SCA accordingly set aside the order of the High Court and substituted an order directing the repurchase of Ensemble's shares at an independently determined fair value, subject to the necessary FICA permission being obtained, and directing that each party bear its own costs in that court in respect of the main application. Each party was ordered to bear its own costs in the SCA.

--------oOo--------