



## 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:** 23 September 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***

*Capitec v Ubuntu Family Health Centre Grayston (Pty) Ltd (328/2025) [2026] ZASCA 123 (23 September 2026)*

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Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs, against a judgment of the Gauteng Division of the High Court, Johannesburg (the high court), sitting as a court of first instance.

This matter concerned whether the moratorium in s 133 of the Companies Act 71 of 2008 (the Act) extends to vindicatory proceedings. The dispute arose when Capitec Bank Ltd (Capitec), having financed a motor vehicle, sought its recovery from Ubuntu Family Health Centre Grayston (Pty) Ltd (Ubuntu), which remained in its possession.

The respondent, Ubuntu, concluded an instalment sale agreement with the appellant, Capitec, in terms of which the latter agreed to advance R2 115 000 to Ubuntu to finance the purchase of a 2020 Porsche 911 Carrera S motor vehicle (the Porsche) for a purchase price of R2 350 000 (the agreement). In terms of the agreement, Ubuntu was required to repay the principal debt, together with interest calculated over a period of 60 months, in 59 equal monthly instalments of R31 638.68. In addition to the monthly instalments, Ubuntu would pay R634 500 on or before the last month of the 60-month period. Ownership of the vehicle remained vested in Capitec until Ubuntu paid all amounts due to Capitec in terms of the agreement.

Capitec duly performed in terms of the agreement and Ubuntu obtained possession of the vehicle. Ubuntu, however, breached the agreement by defaulting on its payment obligations. Ubuntu adopted a resolution to commence business rescue proceedings and appoint a business rescue practitioner. Capitec was only notified of this four days after launching its urgent application. Capitec approached

the high court on an urgent basis for the return of the Porsche. The high court dismissed the application but ordered Ubuntu to pay the costs on the attorney and client scale.

The high court found that Ubuntu was in lawful possession of the Porsche and that the moratorium in s 133 of the Act applied. On the meaning of the term 'lawfully in possession' in s 133 of the Act, the high court held that possession will be unlawful for purposes of s 133 when it is acquired 'by force or stealth' or is 'obtained or maintained through fraud, theft or robbery'. In other words, there must be 'criminal unlawfulness' as opposed to 'civil unlawfulness', i.e. when the possessor has no right vis-à-vis the claimant that justifies its possession. The high court considered this to be the preferred interpretation as, according to it, it 'furthers the objective of business rescue proceedings'. It held that 'for a claimant to show that something is unlawfully in possession of the company in business rescue, it would have to, as a first step, identify the crime or statutory offence that renders it so. Capitec has not done so'. The high court therefore found that the Porsche was lawfully in Ubuntu's possession and dismissed Capitec's application for its return. It granted Capitec leave to appeal its order to this Court. Ubuntu abides the decision of this Court on appeal.

The SCA followed its earlier decision in *Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd* [2021] ZASCA 43; [2021] 3 All SA 843 (SCA) paras 36-34, which confirmed the holding in *Kythera Court v Le Rendez-Vous Café CC and Another* 2016 (6) SA 63 (GJ) para 9 that: 'vindictory proceedings or proceedings for the repossession or attachment of property in the unlawful possession of a company in business rescue is permissible'. The SCA held that the continued possession of property belonging to persons or entities other than the company in business rescue becomes unlawful for purposes of s 133 of the Act once the right to possession has been validly cancelled.

The SCA held further that as a result of Ubuntu's breach, the agreement was validly cancelled. Ubuntu was thus in unlawful possession of the Porsche, entitling Capitec to institute vindictory proceedings for its return. The consent of the business rescue practitioner was not required to launch this application, nor was it necessary to join the practitioner as a party.

Accordingly, the SCA ordered the delivery of the Porsche motor vehicle to Capitec.

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