



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

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Ad All CC v Kapa Bokoni Trading and Projects 10 CC (69/2025) [2026] ZASCA 124 (25 September 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs and set aside an order of the Gauteng Division of the High Court, Pretoria (the high court).

The matter concerns whether the respondent Kapa Bokoni Trading and Projects 10 CC (Kapa) could claim the payments it had made to the appellant Ad All CC t/a Millennium Bodyguards (Millennium) under an agreement that high court found was not only invalid, but illegal.

On 18 January 2019, Millennium concluded a written service level agreement (the agreement) with the respondent, Kapa Bokoni Trading and Projects 10 CC (Kapa), to provide security services to Kapa. The agreement was for a period of 12 months, renewed automatically for a further 12 months, unless Kapa informed Millennium, not less than 60 days before the end of this period, of its intention not to renew. Kapa did not do so, and the agreement was thus extended. Out of time, Kapa then sought to cancel the agreement. Millennium did not accept the cancellation, and continued to provide security services to Kapa in terms of the agreement. Kapa paid for the services rendered by Millennium for the months of January and February 2020.

In May 2020, Kapa wrote to Millennium. It sought confirmation that Millennium was registered to render security services in terms of s 20(1)(a) of the Private Security Industry Regulation Act 56 of 2001 (the Act). Millennium declined to give such confirmation. Millennium rendered invoices to Kapa for the security services provided to Kapa for the months of March to August 2020. Kapa did not pay.

On 27 August 2020, Millennium issued summons out of the Magistrates' Court for the District of Tshwane Central. It claimed R199 329,50 from Kapa in respect of the security services rendered by it in the period March – August 2020, and a further amount of R164 881,25, being the amount that would become due and payable, until the agreement came to an end. Millennium undertook to continue to provide security services, and in fact did so. Kapa pleaded that Millennium was not registered in terms of the Act to render security services. In consequence, Kapa averred, Millennium's claim for payment is 'invalid, and thus, unenforceable'. Kapa also brought a counterclaim. It pleaded that Millennium is not registered in terms of the Act; the agreement between the parties is invalid by virtue of s 20 of the Act; and any claim for payment by Millennium is unenforceable. In the period February 2019 to February 2020 Kapa paid Millennium an amount of R411 173,26 in the bona fide and reasonable belief that the agreement with Millennium was valid, and that Millennium was entitled to payment. By reason of the invalidity of the agreement, it alleged, Millennium was not entitled to receive such payment. Kapa therefore claimed R411 173,26 from Millennium.

The matter proceeded to trial on a stated case. The Regional Magistrate, Mr Nel, held as follows. First, Millennium was required to register in terms of the Act. It had failed to do, and this rendered the agreement invalid. Second, as a result, Millennium was not entitled to any payment in terms of an illegal contract. Third, Millennium was not entitled to retain the payments that were made to it by Kapa, and

required their repayment. The Regional Magistrate dismissed Millennium's claim, with costs; and granted Kapa's counterclaim, with costs.

Millennium appealed the matter to the high court. The high court framed five questions for determination that formed part of the stated case:

'[8.1] Was the appellant required to register in terms of the Act, notwithstanding that it was controlled by a registered security service provider, and notwithstanding that its sole member was registered as such?

[8.2] If the answer to 8.1 above was answered in the affirmative, did that render the entire agreement invalid?

[8.3] If the answers to both the above questions were in the affirmative, did that then 'eliminate' the appellant's performance of security services?

[8.4] Was the appellant entitled to payment of R364 210.75 notwithstanding the fact that the agreement was invalid?

[8.5] Was the appellant entitled to retain the payments received from the respondent for the period 18 January 2019 to 25 February 2020?'

It answered these questions as follows. First, Millennium was required to register in terms of the Act. Second, the agreement was invalid in virtue of the fact that Millennium rendered security services and was not registered. Third, the agreement is not only invalid, but illegal. As a result, Millennium was not entitled to claim performance in terms of an illegal contract; and Millennium was not entitled to retain the payment it received pursuant to an illegal contract. The high court dismissed the appeal, with costs.

This Court granted special leave to appeal, but limited that appeal to the issues raised in the questions framed as 8.2, 8.3 and 8.5 in the passage of the high court's judgment quoted above.

The SCA first interpreted s 20(3) of the Act. Section 20(3), in relevant part, renders a contract inconsistent with s 20(1) invalid, to the extent of such inconsistency. The SCA held that this provision created a form of statutory severance. Invalidity may mean that a contract is unenforceable, but not illegal or that the contract is illegal. Section 20(3) it was found rendered the agreement between Millennium and Kapa illegal, and not merely unenforceable. This was so by reason of the statutory prohibition of rendering of security services for reward, absent registration. The high court was thus correct to so find.

The SCA then considered what cause of action Kapa relied upon to bring its counterclaim. This was a matter of characterisation. Since Kapa ultimately relied upon the illegality of the agreement, its claim for unjustified enrichment had to be brought by way of the *condictio ob turpem vel iniustam causam* and not the *condictio indebiti*. Once this was so, Millennium could not rely upon the rule in *Wilken v Kohler* as a defence. But in terms of the *condictio ob turpem vel iniustam causam*, a number of equitable considerations were relevant in order to determine whether Kapa could prevail in its counterclaim. The SCA raised the question again as to whether the recognition of a general enrichment action should not be considered, but found that it could not do so in this case.

The SCA held that that the high court was in error when it dismissed Millennium's appeal. The high court had found that Millennium was not entitled to retain the payments that it had received from Kapa pursuant to an illegal contract, and hence the Magistrate was correct to grant Kapa's counterclaim. Whether the *par delictum* rule was of application, whether there is a basis for its relaxation, and what further equitable considerations might be relevant, raise questions that were not considered by either the Magistrate or the high court. The determination of these questions requires factual findings based upon evidence. These facts are entirely lacking. As a result, the Magistrate was not in a position to decide the counterclaim on a stated case. The high court should have upheld the appeal on this basis. Its failure to do so means that SCA was required to correct these decisions.

The SCA held that Millennium's appeal before this Court succeeds, with costs. The SCA made the following order:

- 1 The appeal is upheld, with costs;
- 2 The order of the high court is set aside and replaced with the following:
 - '(a) The appeal succeeds in part and fails in part.
 - (b) Each party will bear its own costs of the appeal.
 - (c) The order of the Magistrate, Mr Nel, is set aside and replaced with the following order:
 - "(i) The plaintiff's claim is dismissed with costs.

- (ii) The defendant's counterclaim cannot be determined by way of a stated case and is referred for the hearing of evidence on the resumption of the trial.
- (iii) The costs of the hearing of the stated case on the defendant's counterclaim are reserved for determination at the end of the trial." '

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