THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Tongaat Hulett Limited and Others v Hollard Insurance Company Limited and Others (366/2024) [2026] ZASCA 158 (20 November 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal, with costs, including the costs of two counsel arising from an action in the KwaZulu-Natal Division of the High Court, Durban (the High Court).

The appellants (plaintiffs) are an associated group of companies that form part of the Tongaat Hulett Group (the Tongaat Group). The first plaintiff is the holding and operations company of the Tongaat Group, and the second plaintiff controls the Group's sugar production in South Africa (the South African plaintiffs). The third plaintiff is a sugar producer of the Tongaat Group in Mozambique. The plaintiffs instituted the action in the High Court against Hollard Insurance Company Limited and Global Alliance Insurance, South African companies (the South African defendants) and Hollard Mozambique and Global Alliance Mozambique, respectively registered and incorporated in Maputo, Mozambique (the Mozambican defendants).

In 2011 the plaintiffs instituted the action against the defendants in the High Court for losses allegedly sustained in an amount of R52 377 947 allegedly sustained to a diffuser at the third plaintiff's sugar mill in Mozambique (the loss-causing event). The action was based on two insurance policies which the plaintiffs alleged were issued by the South African defendants, which include the Mozambican defendants as insurers. These policies were taken out to cover risks associated with the expansion of the third plaintiff's sugar mill in Maputo, Mozambique (the Project).

The South African plaintiffs are *incolae* of the High Court (entities domiciled within its area of jurisdiction). The third plaintiff is a foreign *peregrinus* (peregrine). The Mozambican defendants raised a special plea that the High Court lacked jurisdiction in respect of the South African plaintiffs' claim against them, because they had not submitted to its jurisdiction; and as regards the third plaintiff's claim, that there was no *ratio jurisdictionis* (ground of jurisdiction). The High Court upheld the special plea and concluded that it had no jurisdiction to try the action. The High Court granted leave to appeal to the SCA.

The main issue on appeal was whether the High Court correctly dismissed the special plea. The ancillary issues were the following: (a) the status of the plaintiffs as 'the insured' under the policies; (b) whether the Mozambican defendants were the alter egos of the South African defendants who were seeking to evade their obligations under the policies; (c) the meaning and effect of the jurisdiction clause contained in condition 14 of the policies; (d) whether the High Court has jurisdiction in respect of the third plaintiff's claims against the Mozambican defendants, by the application of the *causae continentia* doctrine (cohesion of a cause of action); and (e) if the High Court does not have jurisdiction, whether the common law should be developed to create a jurisdictional basis that did not exist when the action was instituted?

The SCA held that the High Court was correct in dismissing the special plea. Concerning the ancillary issues, the SCA rejected the plaintiffs' contention under (a) that they were collectively insured, and that 'an unincorporated joint venture' was entitled to claim under the policies. On the plaintiffs' own evidence, the first and second plaintiffs did not contribute to the Project; rather, the third plaintiff funded it through a loan, which was repaid.

As to (b), the plaintiffs argued that the Mozambican defendants were merely a façade for the South African defendants, concealing the true insurance relationship and enabling the latter to avoid liability by raising a jurisdictional objection. They therefore sought to pierce the corporate veil. The SCA rejected this argument, finding that the insurance arrangements were genuinely concluded in Mozambique, in accordance with Mozambican law, and that the policies were issued by the Mozambican insurers in respect of risks situated in Mozambique. The Court further held that the plaintiffs had failed to prove their allegation that the corporate structure was used fraudulently to evade liability under the policies.

Regarding (c), the SCA found that, although the Mozambican defendants had consented to the High Court's jurisdiction in respect of both policies, that consent did not confer jurisdiction over a claim between two Mozambican entities. Concerning (d), the SCA rejected the plaintiffs' reliance on the doctrine of *causae continentia* (cohesion of causes), holding that the doctrine may extend an existing jurisdictional basis to related claims where appropriate, but cannot create jurisdiction where none exists. As there was no claim against the Mozambican defendants over which the High Court had jurisdiction, the doctrine could not be used to establish jurisdiction over the third plaintiff's claim against the third defendant. The SCA found that there was no jurisdictional link between the High Court and the claim between the third plaintiff and the third defendant, both Mozambican entities. The insurance contracts were concluded and performed in Mozambique, the insured risk and resulting damage were located there, and the alleged breach occurred there. The Court accordingly found that the dispute was centred in Mozambique. The SCA held that the doctrine could not be used to confer jurisdiction on the High Court over a claim between the third plaintiff and the Mozambican defendants, all foreign peregrini. To do so would undermine South Africa's jurisdictional framework, which is based on established jurisdictional connecting factors (*rationes jurisdictionis*).

As regards (e), the SCA rejected the plaintiffs' argument that the common-law rules governing jurisdiction should be developed in terms of sections 39 and 173 of the Constitution. It held that the requirement of an established jurisdictional connecting factor (*ratio jurisdictionis*), whether through consent to jurisdiction or attachment to found jurisdiction, remains sound and consistent with the Constitution. The SCA found no constitutional basis nor justification in the interests of justice to develop the common law and concluded that no change to the existing jurisdictional rules was necessary.

In a minority judgment, Unterhalter JA agreed with the majority's conclusion on the alter ego issue; the submission to the jurisdiction of the High Court by the Mozambican defendants in respect of claims brought under the policies; and that there was no joint venture which qualified as the insured. The minority judgment takes a more expansive approach to the *causae continentia* doctrine and holds that it is not confined to recognition of jurisdiction as between courts within our legal system; that it applies to a foreign peregrinus plaintiff where the foreign peregrinus defendant has submitted to the jurisdiction of the court; and that its application requires that the claims of such a plaintiff are closely connected to or indivisible from the causes of the other plaintiffs, over which the court does enjoy jurisdiction, but subject to considerations of convenience and practicality. These are concepts already well entrenched in our common law of jurisdiction.

The SCA dismissed the appeal, with costs, including the costs of two counsel.

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