THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Ncala v Park Avenue Body Corporate and Others (813/2023) [2026] ZASCA 16 (12 February 2026)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the Gauteng Division of the High Court, Johannesburg (Mdalana Mayisela J and Ossin AJ sitting as court of appeal in terms of s 57(2) of the Community Schemes Ombud Service Act 9 of 2011), and ordered each party to pay its own costs.

The appellant, Mr Ncala, who is visually impaired, purchased a residential unit on the ground floor in the Park Avenue complex. He was incorrectly advised by the estate agent that he was allowed to make alterations to a washing area located directly outside his unit. When he moved in, he installed his washing machine with its plumbing, with a plastic roof to protect the washing machine from the elements, a well as a security gate to the washing area outside his unit. The Body Corporate disapproved, saying he contravened the Conduct Rules of the complex. The Body Corporate asked him to undo the alterations and return the washing area to its original state and Mr Ncala asked for an exemption from the Conduct Rules on account of his visual impairment. After the South African Human Rights Commission shepherded a mediation process, which was abandoned once the parties failed to find common ground, the Body Corporate removed the gate and the plastic roof sheeting and lodged a complaint with the Community Schemes Ombud Service (CSOS), for contravening its rules. A conciliation process was initiated, but failed, and Mr Ncala lodged a counter-complaint. He claimed that his case invoked two constitutionally protected rights – the right to dignity and the right to equality, both enshrined in the Constitution of the Republic of South Africa. The Adjudicator found that the conduct rules were fair, that the Body Corporate did not treat Mr Ncala differently from other residents and accordingly dismissed his call for an order compelling the Body Corporate to restore the roof sheeting and plumbing. Instead, the Adjudicator ordered the Body Corporate to restore the security gate and charge Mr Ncala a fee for it, as allowed for in the case of other residents. She further ordered Mr Ncala to relocate his washing machine and plumbing to the inside of his home, and restore the washing area to the same state it was in. Aggrieved by the order, Mr Ncala lodged an appeal with the high court. In terms of s 57(1) of the CSOS Act any party aggrieved by the adjudication order is entitled to lodge an appeal with the high court. This, in terms of s 57(2) of the CSOS Act, he had to do within 30 days of the date of the adjudication order, but he lodged his appeal 67 days late. A year after lodging his appeal, he applied to the high court to condone the late filing of his appeal. The high court concluded that it did not have the jurisdiction to condone Mr Ncala's delay. And, even if it had jurisdiction, condoning his delay would not have been justified. Mr Ncala obtained leave to appeal to the SCA.

The SCA had to determine firstly whether condonation for the late filing of the appeal could be granted, secondly whether it should have been granted and if both questions are answered in the affirmative, then whether Mr Ncala's rights to equality and dignity were infringed.

The majority, per Mbatha JA, following the approach to interpretation in the Constitutional Court case of *Minister of Police v Fidelity Security Services (Pty) Limited*, emphasised that legislation should be interpreted purposively; the relevant provision must be properly contextualised; and the statute must be construed consistently with the Constitution. Relying furthermore on s 39(2) of the Constitution and the direction provided by *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd*, Mbatha JA furthermore confirmed that s 39(2) does not only demand judicial attention where a constitutional issue is to be considered,

but whenever a court interprets legislation. Accordingly, the majority of the SCA held that the high court ought to have found that, having read s 57(2) purposively and contextually, it had the implied power to grant condonation, as the refusal thereof impacted on Mr Ncala's right of access to courts in terms of s 34 of the Constitution. The time limit in s 57(2) of the CSOS Act, held the majority of the SCA, simply regulates the procedure that is to be followed. Mbatha JA endorsed the finding by the court in *Baxter*, where it was found that the prescribed period does not have the characteristics of an expiry period provision; that the exclusion of a power of condonation could readily conduce to incorrect decisions that could, and should be rectified, being irremediably visited upon members of community schemes. That would be irreconcilable with the object of the CSOS Act since the whole object of the CSOS Act is to facilitate the cost effective and relatively informal resolution of community scheme related dispute.

Having determined that the high court had the power to consider condonation, the majority considered whether it ought to have granted condonation. Relying on the principles on condonation set out in *Turnbull-Jackson v Hibiscus Coast Municipality*, the majority found that Mr Ncala gave a comprehensive and reasonable explanation for the delay, which was not excessive and caused no prejudice to the Body Corporate and therefore held that the high court should have granted condonation.

The majority of the SCA, in determining whether Mr Ncala's rights to dignity and equality were infringed, had regard to s 9 and s 10 of the Constitution, s 9 of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) and Article 2 of the UN Convention on the Rights of Persons with Disabilities, ratified by South Africa, which provides that failure to accommodate people living with disabilities is a form of unlawful discrimination. The central issue in this case, held Mbatha JA, was the lack of reasonable accommodation of Mr Ncala as a visually impaired person. The majority of the SCA further held that the context within which the lawfulness of the conduct of the body corporate in refusing to deviate from its rules must be weighed, are the provisions in PEPUDA determining that no person may unfairly discriminate against any person including denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society and failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons. The majority acknowledged the high court's distinction between formal and substantive equality, explaining that the latter recognises that different groups of people may require different approaches or forms of accommodation to enable them to enjoy the same level of benefit in their participation in society.

The majority of the SCA emphasised that substantive equality endeavours to eliminate barriers that prevent certain groups of persons from fully participating in various situations, by advancing the concept of reasonable accommodation to ensure that they obtain an equal opportunity to exercise their rights. Reasonable accommodation in this case, according to Mbatha JA, required that the conduct rules of the sectional scheme should not impose a disproportionate or undue burden on a person living with disability. The duty to reasonably accommodate people living with disability is proactive, therefore, failure to accommodate them may be tantamount to unfair discrimination. In the circumstances, held the majority, the rigid attitude adopted by the Body Corporate was not justified. At a special meeting of members to consider whether Mr Ncala should be permitted to keep modifications, the Body Corporate failed to disclose to the members that Mr Ncala was visually impaired. To achieve the objective of equality, Mbatha JA found that reasonable accommodation in a case like this may include allowing structural modifications, granting exclusive rights or exempting disabled residents from burdensome rules. The Body Corporate must espouse the principle of minimum hardship to its members. The majority found that the refusal by the Body Corporate to accommodate Mr Ncala's modifications constituted unfair discrimination.

In respect of the Adjudicator's finding that it was not empowered to grant the orders sought by Mr Ncala, as they were beyond the ambit of s 39 of the CSOS Act, the majority of the SCA held that there were at least three provisions that permitted relief appropriate to Mr Ncala's complaint.

Having found that the Body Corporate acted unfairly and unreasonably, the majority of the SCA found that Mr Ncala was entitled to relief under the CSOS Act. The majority of the SCA further held that the Adjudicator erred in dismissing his complaint, as did the High Court in dismissing his appeal. The majority found that Mr Ncala was entitled to relief permitting his use of the common property in order to reasonably accommodate his disability.

The minority of the SCA, per Vally AJA, traversed legal principles outlined in the cases of *Mohlomi v Minister of Defence*; *Toyota South Africa Motors (Pty) Ltd v Commissioner, SARS* on the issue of the constitutionality of statutorily imposed time limits, as well as the cases of *Moch v Nedtravel (Pty) Ltd t/a American Express Travel*

Service, *Pizani v Minister of Defence, Hartman v Minister van Polisie, Brosens v Minister van Verdediging*, departed from the findings in *Samancor Group Pension Fund v Samancor Chrome Ltd* and *Baxter v Ocean View Body Corporate and Others*. Vally AJA noted that the Court in each of those cases was dealing with legislative provisions that allowed for the Court to adopt the view that the prescribed time periods were not absolute. The minority of the SCA therefore concluded that statutory provisions must be interpreted to accord with the intention of the Legislature. Vally AJA distinguished between the directory language of 'may' and the peremptory language of 'must'. With reference to *Nkisimane and Others v Santam Insurance Co Ltd*, he identified a key rule of statutory interpretation applicable and continued to compare s 41(1) and s 57(2) of the CSOS Act, pointing out that the word 'may' is used in s 41(1) while the word 'must' is used in s 57(2); furthermore, condonation of non-compliance with the imposed time limit is allowed for in s 41(1) but not so in s 57(2). Vally AJA held that in this case, the time limit was couched in peremptory terms and emphasised that the time limit for the institution of an appeal prescribed in s 57(2) is set out in strict terms. The time-limit constituted an 'expiry date'. Accordingly, Vally AJA found that there is no room for condonation for non-compliance with the time limit. Furthermore, to imply such a power would not only contradict the clear wording of the CSOS Act, but also its purpose, which is to provide for an inexpensive, inquisitorial, informal, expeditious finalisation of disputes between a body corporate and its members.

As a result, the SCA upheld the appeal, amended the order of the high court to include the relief requested by the appellant and ordered each party to pay its own costs.