



**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:** 24 February 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*

*Africa Agriculture and Trade Investment Fund v Vienings (74/2024) [2026] ZASCA 19 (24 February 2026)*

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Today, the Supreme Court of Appeal (SCA) handed down judgment, dismissing an appeal from the Eastern Cape Division of the High Court, Makhanda (the high court) which dismissed its application to declare the respondent, Mr Francois Vienings (Mr Vienings), a business rescue practitioner, personally liable for all the debts of Cape Concentrate Pty Ltd (in liquidation) (Cape Concentrate), due to Africa Agriculture and Trade Investment Fund (AATIF).

The application in the high court was based on the provisions of s 424(1) of the Companies Act 61 of 1973 (the old Act), read with item 9 to Schedule 5 to the Companies Act 71 of 2008 (the new Act) and s 140(3)(c)(ii) thereof. Cape Concentrate carried on business of manufacturing and selling tomato paste. It sourced the tomatoes from its sister company Rumibyte (Pty) Ltd (in liquidation) (Rumibyte) which conducted the farming operations to produce tomatoes. Both Cape Concentrate and Rumibyte shared the same board of directors.

Rumibyte started to experience difficulties in securing a continuous flow of tomatoes and was placed under business rescue. Mr Vienings was appointed as its business rescue practitioner. Rumibyte's status affected the business of Cape Concentrate and caused it to suffer financial distress. It too was placed under business rescue with Mr Vienings appointed as its business rescue practitioner.

The business rescue proceedings of Cape Concentrate commenced on 16 May 2013. The first meeting of creditors and employees of both Cape Concentrate and Rumibyte was held on 24 May 2013. AATIF became involved around November 2013.

On 14 August 2014 AATIF and HDC concluded an Investment Partner Agreement in terms of which HDC undertook to make facilities available to qualifying commercial farmers for the production of tomatoes, and to ensure that these farmers are able to repay their respective obligations without becoming over indebted. On 18 August 2014 AATIF and Cape Concentrate concluded the Facility Agreement in terms of which AATIF undertook to loan US\$8 million

to Cape Concentrate. On 19 May 2015, Mr Vienings resigned as Cape Concentrate's business rescue practitioner and was replaced by Mr Daniel Terblanche (Mr Terblanche). About six months later, Mr Terblanche informed the creditors of Cape Concentrate that there were no reasonable prospects of rescuing Cape Concentrate. To this end, Cape Concentrate was placed under liquidation.

On 11 June 2019 AATIF brought an application in the high court which dismissed the application with costs. It held that as a reasonable business rescue practitioner, Mr Vienings may well have terminated the rehabilitation process between August 2014 and January 2015. It found that since AATIF was appraised and had knowledge of the progress of rehabilitation and had no issue with the progress, it cannot be said that Mr Vienings' conduct amounted to negligent or reckless conduct which warrant the extreme punishment provided for in s 424 of the old Act.

On appeal, the core issue for determination before this Court was whether Mr Vienings' conduct of (a) not discontinuing the business rescue proceedings and converting such into liquidation proceedings at any stage between August 2014 and January 2015; and (b) authorising and/or using the loan funds advanced by AATIF to pay guarantees for HDC, was in breach of the funding agreement and constituted reckless conduct and/or gross negligence justifying punishment or liability under s 424 of the old Act.

The SCA held that if Mr Vienings had breached the funding agreement by using AATIF's loan to provide guarantees to HDC as alleged, then AATIF would not have provided a further drawdown. The SCA held further that the fact that a drawdown was provided lead to the inescapable conclusion that AATIF knew and was satisfied after having been notified that its funds were used to satisfy HDC's security requirements, that the requirements in clause 4.2 of the Funding Agreement were met. In any event, without the support of HDC, there would have been no tomatoes for Cape Concentrate to purchase.

The SCA concluded that the high court's finding that Mr Vienings' conduct cannot be said to amount to gross negligence or reckless conduct that warrants punishment under s 424, cannot be faulted..

As a result, the SCA dismissed the appeal with costs, including the costs of two counsel where so employed.

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