



**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:** 01 April 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*

*The Member of the Executive Council of the Department of Human Settlements, Free State Province v Ntsu Building Materials (Pty) Ltd (1054/2024) [2026] ZASCA 41 (1 April 2026)*

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Today the Supreme Court of Appeal (the SCA) delivered a judgment in which it granted the applicant, the Member of the Executive Council of the Department of Human Settlements, Free State Province (the Department), special leave to appeal, but dismissed its appeal against the order of the Full Court of the Free State Division of the High Court, Bloemfontein (the high court).

The MEC instituted an action against Ntsu Building Materials (Pty) Ltd (Ntsu) and seven other defendants in the high court. The MEC claimed repayment of R34 089 179.20 which it paid to Ntsu in 2010 and 2011 as an advance for building materials to be supplied to seven defendants for low-cost housing projects. In 2019, the high court reviewed and set aside the agreements and decisions pursuant to which the advance payments were made. The Department pleaded that the payments were made *sine causa*, that Ntsu was unjustly enriched, and that the Department was impoverished. It relied on the *conditio sine causa specialis*.

Ntsu filed an exception to the enrichment claim on the basis that it failed to disclose a cause of action. The high court upheld the exception and granted the Department leave to amend its particulars of claim within 30 days of the order. With leave, the Department appealed to the Full Court. The Full Court dismissed the appeal. The Department made application to the SCA for special leave to appeal the judgment and order of the Full Court. The SCA referred the application for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013.

The central issue before the SCA was whether the Department's pleadings disclosed a cause of action based on unjustified enrichment.

The Department pleaded that the monies paid to Ntsu were not due or owing at the time that the payments were made, nor thereafter. The basis of this averment was two-fold. First, the Department assumed, incorrectly, that at the time it made the payment it would become indebted to Ntsu because Ntsu would in the future supply building material on behalf of the Department to the seven defendants (the contemporaneous assumption). Second, after the payment was made, this assumption was rendered false by the high court's 2019 decision to set aside the agreements and decisions of which advance payments formed part (the ex-post assumption). The SCA noted that technically, the ex-post assumption related to a future purpose that did not materialise and would more properly found a claim under the *conditio causa data non secuta*, but nothing turned on this distinction.

The SCA held that the contemporaneous assumption and the ex-post assumption rested upon contradictory predicates. The contemporaneous assumption was pleaded to have been false because it was assumed that a debt would arise, which it did not. However, the high court could only have set aside decisions and agreements if such decisions and agreements were concluded. Yet the contemporaneous assumption rests upon the proposition that no liability to pay ever came about. The SCA held further that, until a decision is set aside in court proceedings for judicial review, the decision exists in fact and could have legal consequences.

The pleadings also averred that the Department supplied the seven defendants with building materials through the services of Ntsu. This destroyed both assumptions, as it indicated that Ntsu had supplied materials pursuant to the factual existence of the agreements, meaning that the payments had a *causa* and Ntsu was not enriched at the Department's expense.

The essential grounds upon which the exception was taken was two-fold. First, the setting aside by the high court of the Department's decisions to make advanced payments does not suffice to make out a cause of action on the basis of enrichment, absent an averment that the building materials had in fact not been delivered to Ntsu. Second, the pleading does not allege whether the order of the high court to declare unlawful and set aside the decisions and agreements is an order *ex tunc*.

The SCA held that the first complaint was well founded. The holding in *Oudekraal*<sup>1</sup> makes plain that the pronouncement by a court that certain administrative action is invalid does not mean that the consequences of such action are necessarily invalid. The legal invalidation of the decisions and agreements that formed part of the payments made to Ntsu did not invalidate the payments because at the time they were made, the agreements and decisions existed as a factual matter, and the pleaded case of the Department was that building materials had been supplied by Ntsu to the seven defendants. Accordingly, there was a *causa* for the payments, and hence the claim that Ntsu was unjustifiably enriched could not be sustained. The exception was accordingly well-taken.

The SCA recognised that the matter raised an important question of law concerning the interaction between public law review and a private law enrichment claim. As a result, it granted special leave to appeal. However, it dismissed the appeal because the pleadings did not disclose a cause of action.

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<sup>1</sup> *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA).