



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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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

Davison v Mpambaniso (1330/2024) [2026] ZASCA 50 (14 April 2026)

Today the Supreme Court of Appeal (the SCA) delivered a judgment in which it upheld the appeal of Mr David Philip Davison (Mr Davison), with costs, against an order of the full court of the Gauteng Division of the High Court, Pretoria (the full court). The SCA set aside the order of the full court and substituted it with an order dismissing the original appeal brought by Mr Milile Mpambaniso (Mr Mpambaniso), with costs.

The dispute arose from an investment mandate granted by Mr Mpambaniso, a former attorney, to invest R2 771 934.91 (the investment amount). When repayment of the balance of the investment amount and the growth thereon was not forthcoming following a request during 2018, Mr Mpambaniso instituted an action in the Gauteng Division of the High Court, Pretoria (the trial court). He claimed payment of R3 354 996.59 from Mr Davison personally, and, in the alternative, from Squirrel Benefit Administrators (Pty) Ltd (SBA), a company of which Mr Davison was a director.

The core issue for determination before the SCA was whether the majority of the full court erred in concluding that Mr Mpambaniso contracted with Mr Davison in his personal capacity, when he granted a mandate to invest the investment amount.

The background to the dispute was that Mr Mpambaniso had been introduced to Mr Davison through an advocate friend, who informed him that Mr Davison could assist with the registration of trusts for minor children who had received damages awards. The trusts were formed and administered by SBA, and Mr Davison's involvement was as a director representing SBA, not in his personal capacity.

On 1 February 2015, Mr Mpambaniso sent an email to Mr Davison's SBA email address, recording: '... Please find proof of payment of R2.7m which I request you invest on my behalf. This money was paid to my attorneys' trust account and in turn I instructed them to transfer it to Stemela Lubbe, who are attending to some of my personal matters. *In the meantime invest it at your discretion.*' (Emphasis added in judgment.)'

Mr Mpambaniso's investment was initially transferred to the account of SBA and accounted for in SBA's annual financial statements as a loan owed by SBA to Mr Mpambaniso. During May 2015, the investment was transferred to Boutique Collective Investments (BCI) in the name of SBA. Subsequently, the directors of SBA resolved during 2015 to invest the funds held by SBA through Squirrel Trust Administrators (Pty) Ltd (STA) as investors. STA had been formed with Mr Mpambaniso, Mr Davison and others as shareholders. As a result of this resolution, the

investment was transferred from being held by SBA to being held by STA. Before the end of the 2016 financial year, BCI statements recorded that the investments were held by BCI for and on behalf of STA with investor number 954239. Mr Mpambaniso's attitude was that he did not mind how and where the investment amount was invested.

When Mr Mpambaniso's final redemption request for R3 354 996.59 was processed, the amount was withdrawn and paid to STA's account but not paid over to Mr Mpambaniso because STA was insolvent. STA was subsequently liquidated.

The trial court found that Mr Mpambaniso failed to prove that an agreement had been formed with Mr Davison personally and that the alternative claim against SBA had been abandoned. It dismissed the claims with costs. The full court, however, upheld Mr Mpambaniso's appeal and awarded judgment against Mr Davison personally. The SCA granted special leave to Mr Davison to appeal that judgment.

In respect of the interpretation of the email of 1 February 2015, the SCA held that the mandate was written in an informal context in the light of the history of dealings between the parties. The Court found that the reference to 'you' was not exclusionary to convey that he was contracting only with Mr Davison personally; it was used colloquially. The SCA noted that Mr Mpambaniso knew from their previous dealings that Mr Davison was representing SBA, and that it was common cause that Mr Davison was not registered in his personal capacity with the Financial Services Board to render such services.

The SCA found that it was improbable that Mr Mpambaniso would have mandated Mr Davison to invest the investment amount in his personal capacity. The Court observed that the investment was initially paid into an SBA account, which is indicative of him having contracted with SBA. The Court reasoned that if the agreement was concluded with Mr Davison personally, then there is no reason why the funds could not have been paid to him directly, without passing through any conduit.

The SCA further noted that when formal demand for payment was made, Mr Mpambaniso demanded payment from SBA, not from Mr Davison personally. The SCA found that Mr Mpambaniso's assertion that his agreement was with Mr Davison personally was made only in a letter dated 24 May 2018, after he had learned that STA was insolvent.

In respect of the alternative claim against SBA, the SCA noted that SBA was not a party to the appeal and that Mr Mpambaniso had not sought leave to conditionally cross-appeal the dismissal of that claim. The SCA also found that the relevant evidence established, on more than a preponderance of probability, that the initial mandate granted in favour of SBA was transferred from SBA to STA. As such, there would be no remaining claim against SBA.

The SCA concluded that the reasoning of the trial court and the full court's minority judgment could not be faulted. It held that the majority of the full court erred in reaching the conclusion it did by elevating colloquial and inconclusive references to 'you' and 'your discretion', as proof that Mr Davison had contracted personally with Mr Mpambaniso. Such a conclusion is improbable when viewed in the context in which the email of 1 February 2015 was addressed to Mr Davison.

As a result, the SCA made an order upholding the appeal with costs, setting aside the order of the full court, and substituting it with an order dismissing Mr Mpambaniso's appeal to the full court with costs on scale C.