



## 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:** 27 January 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***

*Tourvest Holdings (Pty) Ltd v Murti (806/2024) [2026] ZASCA 8 (27 January 2026)*

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Today, the Supreme Court of Appeal (SCA), handed down a judgment, dismissing an appeal against an order granted in the Gauteng Division of the High Court (high court), Johannesburg, with costs.

On 17 November 2018, the respondent, Ms Murti, was injured whilst travelling in a safari truck in Botswana, as part of a Southern African safari tour arranged by the appellant, Tourvest Holdings (Pty) Ltd, trading as Drifters Adventours (Drifters). The truck had been converted to transport 17 passengers, with large side windows to facilitate viewing by its occupants and fitted, in the rear of the passenger compartment of the truck, with private lockers to secure the belongings of passengers. Drifters promotes the lockers as being accessible to passengers, even while the truck is being driven. While the truck was in motion, Ms Murti alighted from her seat to access her locker. She lost her balance and fell against a window. The window fell out of its frame. She fell through the opening on to the tar road and sustained various injuries.

In the subsequent action for delictual damages against Drifters, in the high court, Ms Murti alleged that her injuries were caused by the negligence of Drifters and its employee, the driver of the truck, Mr Mathabela. Drifters pleaded, relying on two disclaimers, that it had contracted out of liability for Ms Murti's damages. The high court ordered that this issue be determined separately from the other issues in the trial. It found that Ms Murti was not bound by the terms of the disclaimers and also ordered Drifters to pay her costs relating to the determination of the separated issue.

The high court held that Drifters was not exempted from liability by reason of the disclaimers in paragraph 9 of the brochure (the first disclaimer) or paragraph 17 of the indemnity form (the second disclaimer). Specifically, it held that the purported exclusion of liability in the first disclaimer was of such a general and unspecified nature that it could not, on its own, absolve Drifters of negligence of the kind alleged in the particulars of claim. As regards the second disclaimer, it concluded that her partner, Mr Hannon, was not authorised to conclude the indemnity on her behalf and that she was otherwise also not bound by it.

The SCA held that the high court correctly rejected the version of Mr Mathabela, that all the indemnity forms were signed and obtained from all the participants on 3 November 2018, finding it neither credible nor reliable. The SCA held further that those factual findings are also consistent with Drifters' allegation in the plea.

The SCA found that there was no credible evidence that Ms Murti was even aware of the existence of the indemnity form. It held that Drifters failed, at a preliminary level, to establish that the provisions of the first disclaimer ought reasonably to have come to the attention of Ms Murti. The second disclaimer had not come to her attention at all. The suggestion that she should have expected disclaimers of such nature to possibly exist and that she agreed to be bound by their terms, whatever they may be although not displayed with sufficient prominence, is not a valid argument. It cannot be elevated to a level of a contractual exclusion of liability. Accordingly, the appeal should fail for this reason alone.

The SCA held further that there was also no scope for the application of the doctrine of quasi-mutual assent invoked by Drifters to establish an agreement between Ms Murti and Drifters incorporating for the first disclaimer. The SCA concluded that it would have been inclined to finding any disclaimer for liability, where Drifters had expressly promoted their tours to allow participants to alight from their seats and move towards the lockers while the truck was in motion, to be contrary to public policy and *mores*, unfair and unenforceable.

The SCA accordingly dismissed the appeal with costs.

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