



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: 08 October 2021

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

MultiChoice Support Services (Pty) Ltd v Calvin Electronics t/a Batavia Trading and Another
(Case no 296/2020 and 226/2021) [2021] ZASCA 143 (08 October 2021)

Today the SCA upheld two appeals against orders made the Limpopo Division of the High Court, Polokwane (high court) and set them aside. The first was an order declaring that the appellant, MultiChoice, was guilty of contempt of court (the contempt order) when in September 2019 it cancelled two agreements concluded with the respondents (Calvin), hereafter ‘the September cancellations’. The agreements cancelled were an agency agreement and an accredited installers agreement (installers agreement) in terms of which Calvin was appointed as an agent and installer of MultiChoice’s equipment. Calvin was granted access to the I.T systems of MultiChoice under the installers agreement. The second order was one executing the contempt order (the execution order).

Both the contempt order and the execution order were based on an interdict granted by the high court in terms of which MultiChoice was directed to restore Calvin’s access to MultiChoice’s I.T systems; to grant Calvin access to its equipment; and to permit Calvin to continue as an agent of and service provider, pending a ‘review’ of the decision by MultiChoice to cancel the agreements. MultiChoice complied with this order. The SCA however held that the order was legally unsustainable because the cancellation of the agreements was an act by a private contracting party in the enforcement of its rights under the agreement. This act was not subject to judicial review: it had nothing to do with the exercise of public power and did not constitute administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000. Neither was the decision to cancel a violation of a principle of legality sourced in the rule of law, a founding value of the Constitution. Since this order was foundational to the contempt order and execution order, those orders were fatally defective and had to be set aside.

The SCA held that in any event Calvin failed to prove that MultiChoice had committed contempt of court. In December 2019 MultiChoice cancelled the agreements a second time based on new facts established after the September cancellations: fraud perpetrated by Calvin and its employees causing MultiChoice to suffer loss of some R2.25 million (the December cancellations). Calvin failed to establish that MultiChoice wilfully and mala fide had not complied with the interdict, and the contempt order should not have been issued.

The SCA held further that Calvin simply did not meet the requisites of s 18 of the Superior Courts Act 10 of 2013 for the execution of the contempt order. It did not prove exceptional circumstances or that it would suffer irreparable harm if the contempt order was not implemented, or that MultiChoice would not suffer irreparable harm if it was. This execution order likewise should not have been granted. Finally, Calvin was ordered to pay costs on an attorney and client scale, for three reasons. The first, Calvin had abused court process: to ensure its continued access to MultiChoice's I.T systems, well knowing that MultiChoice was entitled to cancel the agreements in accordance with their terms. Second, it had put MultiChoice to unnecessary trouble and expense in opposing the unmeritorious applications brought by Calvin. Third, the agreements provided that Calvin would be liable for costs on an attorney and client scale.