



**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 March 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*

*Solidarity and Another v Black First Land First and Others (163/2020) [2021] ZASCA 26 (24 March 2021)*

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against an order of the Equality Court, Gauteng Division of the High Court, Johannesburg; and ordered the matter to be remitted to the court a quo to be finalised.

The issue for determination by the court was whether the order granted by the Equality Court declaring the proceedings a nullity was competent.

On the morning of 1 February 2019 a walkway bridge collapsed at Hoërskool Driehoek, in Vanderbijlpark, tragically causing the death of four learners, aged between 13 and 17 years old. Twenty other learners were injured. All were white. Pursuant thereto, comments emanating from the facebook account of one Siyanda Gumede, the twitter account of the first respondent, a registered political party at the time, and the second respondent, the national spokesperson of the first respondent, were made. These comments were to the effect that the deceased and the injured learners, because they were white and the offspring of *'land thieves'*, were deserving of punishment.

These comments caused widespread outrage on various media platforms. When approached for clarification by The Citizen newspaper, the second respondent responded that he was *'not certain'* whether the victims were white and he would mourn them if they were black. This led to Solidarity, a registered trade union of predominantly white members, launching an application in terms of s 20 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act).

Solidarity sought an order declaring that the comments constituted hate speech, as defined by ss 7, 10 and 11 of the Equality Act and were an affront to human dignity and white people in general. Further ancillary relief was sought, including the payment of damages to the families of the children. The application was opposed by the first respondent.

Judgment was reserved for hand down on 3 December 2019. On that day, the judge requested the parties to address him on the effect of the Supreme Court of Appeal's judgment in *Qwelane v SAHRC*, which had been delivered on 29 November 2019 and which held that s 10 of the Equality Act was unconstitutional. This matter was subsequently appealed to the Constitutional Court and its judgment is awaited.

After hearing oral submissions, the judge adjourned the matter to consider the submissions. He then wrote by hand, on the written 'judgment' that he had prepared, 'The judgment is a nullity in view of the SCA judgment of Jonathan Dubula Qwelane case No 686/2108'. The order that was subsequently issued by the registrar recorded: 'The proceedings in case EQ2/2019 are declared a nullity'. The written judgment prepared by the judge had found in favour of the applicants.

The court held that the court a quo order did not achieve finality nor was it capable of being enforced. The high court had failed to discharge its primary function. The order that it issued declined to determine the dispute before the court. The court, by rendering its own 'judgment' a nullity, left the parties without a binding decision. Further it was held that a court does not enjoy the power not to decide a case that is properly brought before it. Nor may a court declare its own proceedings to be a nullity.

The Supreme Court of Appeal upheld the appeal and remitted the matter to the court a quo to enable the dispute to be finally resolved.

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