



## 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** 20 March 2015

**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Newlands Surgical Clinic v Peninsula Eye Clinic (086/2014) [2015] ZASCA 25  
(20 March 2015).***

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#### **MEDIA STATEMENT**

Today the Supreme Court of Appeal dismissed the appeal in this matter against the judgment of the Western Cape High Court, Cape Town. The appeal turned on the interpretation of s 82(4) of the Companies Act 71 of 2008 which is concerned with the restoration of the name of a company onto the Companies Register after it had previously been registered. More pertinently, the issue was whether the reinstatement of a company by the Companies and Intellectual Property Commission (CIPC) under s 82(4) operates retrospectively so as to validate actions performed on behalf of the company during its period of deregistration.

The issue arose from the following facts:

The respondent, Peninsula Eye Clinic, is essentially an incorporated association of ophthalmic surgeons. Newlands Surgical Clinic, the appellant, operated a surgical clinic in Newlands, Cape Town. Since the respondent did not have its own clinic, its members made use of the facilities offered by the appellant. Arising from this business relationship, the respondent claimed an amount of R570 000 from the appellant. By agreement the parties went to arbitration. During the arbitration proceedings that followed, the arbitrator held in favour of the respondents. The appellant then went on appeal before an appeal arbitration tribunal of three members who dismissed the appeal and confirmed the award of the first arbitration.

At that point it came to the respondent's notice that before the arbitration proceedings started, the appellant had been deregistered as a company. According to the established legal position, that

meant that the arbitration proceedings were nul and void. In consequence, the respondent brought an application before the CIPC for the reinstatement of the appellant in terms of s 82(4) of the Companies Act, which application was successful.

The question then arose whether reinstatement under the section had retrospective effect to the date of deregistration, which would validate the arbitration proceedings, or whether it worked prospective from date of reinstatement only, which would mean that the award in favour of the respondent remained nul and void. The respondent contended for the former while the appellant argued for the latter. The high court decided that the respondent's interpretation was correct. On appeal the Supreme Court of Appeal essentially confirmed that point of view.