THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

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Neutral Citation: *African Banking Corporation of Botswana v Kariba Furniture Manufacturers & others* (228/2014) [2015] ZASCA 69 (20 May 2015)

Kariba Furniture Manufacturers was a company in financial distress. Due to a lack of funds it ceased operations in about 2005. In January 2012 its shareholders resolved that Kariba should begin business rescue proceedings under s 129 of the Companies Act 71 of 2008 and, in February 2012, the second respondent, Mr J P Jordaan, was appointed as business rescue practitioner.

A business rescue plan was devised and presented to a meeting of creditors held on 26 March 2012. At this meeting the appellant bank, which held a voting interest of 63%, together with certain other creditors rejected the plan. The attorney then representing the shareholders, who held approximately 23% of the voting interest, indicated to the practitioner that the shareholders wished to make a binding offer to purchase the appellant's voting interest under s 153(1)(*b*)(ii) of the Act. The practitioner immediately ruled that it was thereafter not open to the bank to respond to the offer, that this offer was binding on the bank and that its voting interest had to be transferred to the shareholders immediately. He proceeded to amend the plan to reflect the bank as holding no interest, and its voting interest being held by the shareholders. The bank's representatives then left the meeting and the proposed business rescue plan was approved.

The appellant bank then applied to the Gauteng High Court contending that it could not be bound by the so-called offer which had been made and that the approval of the business rescue plan was therefore invalid. The court dismissed the application. It approved the procedure adopted by the practitioner and found that there had been a 'binding offer' as envisaged by s 153(1)(*b*)(ii) which did not have to be accepted for it to become binding both on it and the appellant bank.

In an appeal to the Supreme Court of Appeal, the judgment of the high court was set aside. The court held both that in order for there to be a binding offer, it had to be accepted and that an offer merely regurgitating the terms of the section without any mention of a purchase price, did not constitute an offer to purchase. The appeal therefore succeeded, the order of the high court set aside in part, with an order declaring the offer made to purchase the voting

interest of the appellant bank to be not binding on the appellant and that the business rescue plan adopted on 26 March 2012 be set aside.

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