



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

FROM The Registrar, Supreme Court of Appeal
DATE 11 October 2021
STATUS Immediate

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

*Simon Nash and Others v The Cadac Pension Fund (In curatorship)
(Registration Number: 12/8/0020425) and Others (case no 545/2020) [2021]
ZASCA 144 (11 October 2021)*

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order of the Gauteng Division of the High Court, Johannesburg (high court) in terms of which an application for an interdict was dismissed. The appellant, Simon Nash, approached the high court seeking an urgent interdict against the Cadac Pension Fund (in curatorship), its curators and its administrator, NMG Administrator. Cadac (Pty) Ltd, the employer, in relation to the Fund, sought to intervene in the interdict application. So did three other members of the Fund. All these applications were dismissed by the high court.

The applications were prompted by communication sent by the Fund administrators to Mr Nash and other members of the Fund in March 2020 to the effect that their pension contributions would no longer be accepted by the bank and that contributions received

from them during the period commencing from March 2003 to April 2020 would be refunded to them. When the communication was received, a court application between Mr Nash and the Fund together with its curators and administrators, was pending in the high court in relation to pension benefits due to Mr Nash. The background to these events is that, until December 2010 when the Fund was placed under curatorship, Mr Nash had been one of its trustees. He was also a director of Cadac Pty Ltd.

After turning 70 in November 2018, Mr Nash gave notice to NMG for the withdrawal of his pension benefit of R36 525 806.31 from the Fund. The withdrawal date of the benefit was stated as 31 May 2019. However, he was advised by the fund administrators that the curators had instructed that his benefit be flagged in terms of section 37D of the Pension Fund Act 24 of 1956. This turn of events was rooted in a long history of litigation between Mr Nash and the Fund curators, particularly Mr Mostert who was a co-curator and co-liquidator in seven other Funds in which Mr Nash had been involved which were also placed in curatorship or liquidation following fraudulent withdrawal of surplus funds from them through a scheme that came to be known as the 'Ghavalas scheme'. Mr Nash and his erstwhile business Associate, Ghavalas were implicated in the scheme.

Court proceedings instituted by Mr Mostert following an exchange of accusations between himself and Mr Nash, led to the high court, in August 2018, making findings that Mr Nash was a dishonest and vexatious litigant, among other things. The court then ordered that Nash had to first obtain the leave of the court as a prerequisite to instituting any further proceedings against Mr Mostert.

When the appellants instituted the urgent interdict application against the respondents in April 2020, the response was that Mr Nash and Cadac had failed to first obtain leave of court to institute proceedings. The respondents also maintained that the appellants also failed to meet an obligation under the 2010 court order of curatorship, to seek leave of court prior to instituting proceedings against the Fund.

The SCA was satisfied that Mr Nash and Cadac did seek leave to institute the proceedings. It rejected the submission that the application for leave should have been brought separately from and prior to the interdict application. It considered that the

prior application argument by the respondents was mere formalism; that the court had a discretion to grant leave, and further that both the leave and interdict applications were based on the same facts. The SCA also found that the appellants had established a right that required protection. Further the right was under threat by the threatened conduct of refunding the appellants' pension contributions, which could leave them without pension and open them to income tax liability. The SCA also found that the both Cadac and the other intervenors had a legal right to the subject matter of the litigation. The court then set aside the order of the high court and granted the interdict.

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