



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: 9 December 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.

Rajkumar Tahilram v Trustees of the Lukamber Trust and Another (845/20) [2021] ZASCA 173 (9 December 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs, an appeal against the decision of the High Court, Gauteng Division, Johannesburg.

The primary issue before the SCA was this: When parties agree to refer a matter to an expert valuer, whether the valuer is legally permitted to unilaterally withdraw the valuation in order to alter or amend it, once the valuer's valuation has been communicated to the parties concerned.

Meyer AJA, writing the unanimous judgment of the court, concluded that subject to limited exceptions (the mere correction of an obscurity, ambiguity, uncertainty, clerical, arithmetical or other error without thereby altering the sense and substance of the valuation), and in the absence of a contractual provision to the contrary or agreement or waiver by the parties, whenever parties agree to refer a matter to a valuer, then so long as the valuer arrives at his or her decision honestly and in good faith, the decision is final and binding on them and they are bound by it once communicated to them. The valuer is then *functus officio* insofar as the valuation and matters pertaining thereto are concerned. That being so, the valuer is then not permitted to unilaterally withdraw or cancel the valuation in order to alter or amend it. Only a court has the power to interfere with the valuer's decision in review proceedings. The judicial ambit of the court's power to interfere is severely circumscribed, and limited to the narrow grounds as enunciated in the SCA's jurisprudence.

To hold otherwise, the SCA held, would lead to uncertainty and a lack of finality; how many times then may a valuer withdraw his or her valuation and issue an amended one to correct mistakes of fact or value in a previous one? Values of finality and certainty are foundational, especially to administrative law and to contract law. In their shareholders agreement the parties have identified a means of agreement on the fair market value of the shares of the company concerned, by reference to the valuer identified by them and that his valuation shall be final and binding on them; they must be held to their bargain.

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