



## 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:** 17 June 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***

*Beukes v Ten Four Consulting and Others (570/2020) [2021] ZASCA 83 (17 June 2021)*

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Today, the Supreme Court of Appeal (SCA) overturned an order by the Gauteng Division of the High Court, Pretoria (the high court), in terms of which it set aside an arbitration award and remitted the case for hearing before a new arbitrator. The appellant, Ms Germa Beukes, and the first and second respondents, Ten Four Consulting (Pty) Ltd and Fourth Dimension Financial Services (Pty) Ltd, respectively (the respondents), concluded a restraint of trade agreement in 2008. In 2017, the respondents commenced arbitration proceedings against the appellant based on an alleged breach of that agreement. The third respondent, the Honourable Justice Barend Rudolf du Plessis, a retired Judge of the High Court (the arbitrator), presided over those proceedings. The respondents claimed payment of R1 145 409.60 in terms of a penalty clause in the agreement as well as damages in the sum of R3 129 078. One of the appellant's defences was that the provisions of s 2(1) of the Conventional Penalties Act 15 of 1962 precluded the respondents from claiming damages in addition to the penalty or in lieu thereof (the preliminary point), as they were not entitled to do so under the restraint agreement. The parties were represented by senior counsel in the arbitration, who had agreed that the preliminary point should be argued and decided first. The arbitrator decided the preliminary point in favour of the appellant and dismissed the respondents' claim for damages.

The respondents then applied to the High Court for an order reviewing and setting aside the arbitration award on the grounds that the arbitrator had committed a gross irregularity in the conduct of the arbitration proceedings and exceeded his powers as contemplated in s 33(1)(a) and (b) of the Arbitration Act 42 of 1965. They alleged that the arbitrator had commenced the arbitration proceedings in their absence; and that they were not granted an opportunity to present evidence on the preliminary point, or to be heard on the question whether their claim for damages should be dismissed. The high court agreed. It concluded that the arbitrator's actions prevented the respondents from having their case fully and fairly determined and that he had allowed his decision-making function to be usurped by the appellant.

The SCA held that these conclusions were unsustainable on the evidence. The respondents did not even begin to make out a case that the arbitration had commenced in their absence. This most serious allegation was recklessly made. It had no factual foundation, was based on

an 'impression' by the respondents' director, Mr Theunis Ebersohn, and was pure speculation. The allegation that the respondents were treated unfairly was likewise groundless. The parties and their legal representatives were fully aware of the nature and ambit of the preliminary point and the consequences that would follow upon its determination. The appeal was accordingly upheld with costs and the order of the high court set aside.

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