



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: 22 APRIL 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

Le Hanie and Others v Glasson and Others (214/2021) [2022] ZASCA 59 (22 APRIL 2022)

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

The issue before the SCA was whether the high court erred in finding the appellants in contempt of court.

On 20 October 2017, the first to fourth respondents (the respondents) launched an application against the Eagle Canyon Golf Estate Home Owners Association NPC (the HOA). The respondents sought relief in relation to the alleged contravention of the Rules of the HOA, by one of the owners of a property at the Eagle Canyon Golf Estate (the Estate). The application was opposed by the HOA, as it was then constituted. On 11 December 2018, an order (the court order) was granted in favour of the respondents against the HOA. The HOA was ordered to take all reasonable steps to ensure that the owner concerned rectified the breaches of the Rules of the HOA.

The HOA took numerous steps to do so, including appointing an independent architect and land surveyor to investigate and advise on the steps to be taken by the owner to comply with the relevant Rules. Despite these efforts, on 18 September 2019, the respondents applied to the high court for the appellants, the directors of the HOA, to be held in contempt of the court order (the contempt application). They sought imprisonment of the appellants, *alternatively*, a fine. On 9 June 2020, the high court issued an order holding the appellants in contempt of court. A fine in the amount of R10 000 was imposed on each of the appellants (the contempt order). The appellants were ordered to pay the costs of the contempt application on the attorney and client scale.

The SCA held that having sought imprisonment, it was clear from the authorities that the burden of proof that rested on the respondents was to prove non-compliance with the court order beyond a reasonable doubt. The SCA was however of the view that even on the lower standard (a balance of probabilities), the respondents had not shown that the appellants had not complied with the court order. The SCA also found that that there was no mala fides and or deliberate or wilful non-compliance with the court order. In addition, the court order was granted against the HOA, and not the appellants personally. No case was made out to hold the appellants guilty of contempt. The SCA therefore held that there was no factual or legal basis to hold the appellants in contempt of the court order.

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