



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

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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

Mystic River Investments 45 (Pty) Ltd & Another v Zayed Paruk Incorporated & Others (Case no 432/2022) [2023] ZASCA 54 (19 April 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing with costs, an appeal against the decision of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court).

The issue before the SCA was whether the high court correctly exercised its discretion by ordering the second appellant to furnish security for costs.

The first appellant, Mystic River Investments 45 (Pty) Ltd (Mystic River) and the second appellant, Mr Karim Issa Mawji, instituted an application against the respondents in the high court. On the back of allegations that the respondents had 'hijacked' and were 'looting' Mystic River, the appellants sought an order: preventing the respondents from continuing to unlawfully represent and make decisions purportedly on behalf of, or in the name of Mystic River; ordering the respondents to return funds belonging to Mystic River, which were misappropriated or diverted from it; compelling the respondents to provide full and proper accounts in respect of the affairs of Mystic River; for those accounts to be debated; and for Mystic River to be paid any amounts due to it pursuant to such statement and debatement of account.

The respondents served the second appellant with notices in terms of rule 47(1) of the Uniform Rules of Court, calling upon him to furnish security for costs in the main application. They contended that he is a *peregrinus* of the court; has no assets in the Republic of South Africa (the Republic) and would be unable to pay their costs should they be successful in the main application. Security for costs was ordered by the high court.

The SCA held that the high court erred in holding that, as a general rule, a *peregrinus* is obliged to furnish security for costs. This misdirection justified interference by this Court. That being so, this Court was at large to consider the application afresh. In considering the application, the SCA found that the second appellant did not plead poverty. He did not complain that an order of security would cause an injustice in the sense that it would prevent him from pursuing the main application. There was, thus, nothing really on his side of the scale. But if no security was ordered and there was a cost order against the second appellant (whether jointly or severally with Mystic River or not), the respondents would suffer the inconvenience, delay and additional costs involved in enforcing a cost order in a foreign jurisdiction. The SCA therefore held that fairness and equity dictated that the second appellant be ordered to provide security for costs. Furthermore, it held that the high court erred in directing that the appellants pay the costs of the application to provide security jointly and severally.

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