THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 613/2017

In the matter between:

TECHNOLOGY CORPORATE MANAGEMENT (PTY) LTD	**FIRST APPLICANT**
ANDREA CORNELLI	**SECOND APPLICANT**
ANTONIO JOSE GARRIDO DA SILVA	**THIRD APPLICANT**
IQBAL HASSIM NO	**FOURTH APPLICANT**
BARRY KALMIN NO	**FIFTH APPLICANT**

and

LUIS MANUEL RITO VAZ DE SOUSA	**FIRST RESPONDENT**
JOSE MANUEL GARCIA DIEZ	**SECOND RESPONDENT**
SHARON ANN OBEREM	**INTERVENING APPLICANT**

Neutral citation: *Technology Corporate Management (Pty) Ltd and Others v De Sousa and Another* (Case No 613/2017) [2026] ZASCA 84 (18 June 2026).

Coram: WALLIS, MBHA, VAN DER MERWE, PLASKET and DLODLO AJJA

Heard: The application to vary the court's order was dealt with on the papers without an oral hearing.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 11h00 on 18 June 2026.

ORDER

It is ordered that:

1 Paragraph 3(a) of the order granted in this matter in the judgment delivered on 26 March 2024 is amended by the insertion of the words ‘and to be paid by the defendants jointly and severally, the one paying the other to be absolved’ at the end of the paragraph.

2 The application for variation of the order is otherwise dismissed.

3 There is no order in regard to the costs of the application for variation of the original order.

JUDGMENT

Wallis AJA (Mbha, Van der Merwe, Plasket and Dlodlo AJJA concurring):

[1] Paragraphs 2 and 3 of the order in this appeal read as follows:

> ‘[2] The application for leave to appeal is upheld with costs, such costs to include the costs of the application for leave to appeal before the high court and the costs of two counsel.
>
> [3] The appeal is upheld with costs, including the costs of two counsel and the judgment of the High Court is altered to read as follows:
>
> (a) The plaintiffs’ claim is dismissed with costs, such costs to include those consequent upon the employment of two counsel.
>
> (b) The costs of the adjournment on 2 October 2012 including the costs consequent upon the employment of two counsel are to be costs in the cause in the action.
>
> (c) The plaintiffs are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of the application to amend the particulars of claim dated 9 December 2013 and the costs of the application in terms of Rule 35(3) dated

> 4 December 2015, such costs to include those consequent upon the employment of two counsel.'

Sub-paragraph (d) is omitted as being irrelevant to the question now before us.

[2] The First Respondent and the Intervening Applicant were formerly married to one another in community of property and after their divorce a number of disputes ensued regarding the division of their joint estate. An accountant, Mr Anton Lewis was appointed as the liquidator of the joint estate. Given that the principal asset of that estate was Mr de Sousa's shareholding in the First Appellant the process of liquidation was delayed pending the outcome of the litigation leading to this appeal and the judgment delivered on 26 March 2024. It was further delayed by a subsequent unsuccessful application for leave to appeal to the Constitutional Court by Mr de Sousa. Only thereafter was it possible to give effect to the costs orders made by this Court and to proceed to taxation of those costs.

[3] In the course of taxation, Mr Lewis expressed the view that the orders cited above, with the exception of paragraph 3(c), rendered Mr de Sousa and Mr Diez jointly, and not jointly and severally, liable to pay those costs. That led the Appellants on 9 February 2026 to lodge the application with this Court seeking the amendment of the order by the insertion at the end of paragraphs 2 and 3(a) of the words 'such costs are to be paid by the plaintiffs jointly and severally, the one paying the other to be absolved'. Mr Diez and Mrs Oberem have been served and either support the relief sought in the application (Mr Diez), or abide the outcome of the application (Mrs Oberem). Mr Lewis represents the joint estate of Mr de Sousa and Mrs Oberem. He has not opposed the application but deposed to an affidavit setting out certain facts and his reasons for thinking that the order should remain unaltered. Mr de Sousa has been served but has not intervened. His interests are protected by what Mr Lewis has to say.

[4] The application was supported by an affidavit by Ms Monique Harris, who only became a director of the company, after the resignation of the Fourth Appellant on 1 October 2016 when she was employed in corporate sales.[1] Ms Harris was not directly involved in any way in the litigation and, although a director while the appeal ran its course, it is unclear that she had any engagement with the conduct of the appeal or any personal knowledge of events arising in relation to it. Her conclusion that the words the Appellants seek to have incorporated in the order had been omitted in error[2] and that it was the intention of the court that they should be included was therefore an inference from the fact that the point had not been dealt with expressly in paragraphs [271] to [277] of the judgment and that the costs order in paragraph 3(c) was made joint and several against the Respondents.

[5] Fortunately all members of the original appeal Bench were available to deal with the application. The issues were clear from the affidavits delivered and it was not suggested that written argument or a hearing was necessary. We agree and the application was accordingly disposed of on the papers and without a hearing.

[6] It is correct that the Court has power to correct an error in an order, but before doing so it must be satisfied that there was indeed an error or oversight. It is now over two years since the judgment was delivered and all the members of that Bench had already retired when they were recalled to service for the specific purpose of hearing this appeal. None of us claim to have any direct recollection of the course of argument on this aspect of costs, as opposed to the separate issues

[1] *De Sousa v Technology Corporate management (Pty) Ltd and Others: De Sousa v De Sousa and Another* [2018] ZAGPJHC 445, para 5.
[2] Described in her affidavit as a clerical or administrative error.

dealt with in paragraphs [271] to [277] of the judgment. It may in fact be the case that it was not adverted to at all in the course of oral argument.

[7] Justice Wallis retained on his computer a bundle of documents dated 21 September 2023 tendered on behalf of the appellants as supplementary to their heads of argument. This was accepted provisionally at the time and to our recollection no dispute about its having been filed was ventilated during the hearing. That bundle contained a draft order if the appeal succeeded, that in pertinent part read as follows:

'2 The appeal is dismissed with costs.

3 The Order *a quo* is replaced with the following order:

3.1 The action is dismissed with costs

3.2. The respondents (the plaintiffs *a quo*) are to pay the costs of

3.2.1 the action, jointly and severally, the one paying the oterh to be absolved, including the qualifying and attendance fees of the expert witnesses, J Geel and HE Wainer, and those costs consequent upon the employment of two counsel;'

The remaining sub-paragraphs of paragraph 3.2 dealt with the costs in various interlocutory proceedings at the trial.

[8] There is a difference between that draft order's treatment of the costs of the appeal and the costs of the trial, in that the latter asked for an order that the costs be paid jointly and severally by the Respondents, the one paying the other to be absolved, whilst the former did not. There is nothing before us to indicate that this was not intentional. We accept that there was an oversight on our part in not addressing the request for the costs of the trial to be paid jointly and severally and are satisfied that but for that oversight such an order would have been granted. However, in the absence of an explanation to similar effect, we cannot assume that the draft order in regard to the costs of the appeal was erroneously formulated by counsel and did not reflect what was being sought in that regard. The order in

respect of those costs cannot therefore be altered. No costs order was sought in regard to the costs of this application and none is granted.

[9] Accordingly the following order is made:

1 Paragraph 3(a) of the order granted in this matter in the judgment delivered on 26 March 2024 is amended by the insertion of the words ‘and to be paid by the defendants jointly and severally, the one paying the other to be absolved’ at the end of the paragraph.

2 The application for variation of the order is otherwise dismissed.

3 There is no order in regard to the costs of the application for variation of the original order.

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Justice M J D Wallis