



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: 12 November 2024

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

Willem Tobias Hanekom N O and Others v Nuwekloof Private Game Reserve Farm Owners' Association (502/2023) [2024] ZASCA 154 (12 November 2024)

Today the Supreme Court of Appeal (SCA) struck off an appeal from the roll, with costs, against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

The Trustees of the WTH Trust (the Trust) concluded an agreement of sale with the trustees of the Nuwekloof Trust in terms of which the former Trust a property within the Nuwekloof Private Game Reserve (the property). In terms of the sale agreement, the Trust, upon registration of transfer of the property into its name, became a member of the Nuwekloof Private Game Reserve Farm Owners' Association (the Association). The Trust failed to pay certain levies to the Association, which invoked clause 5.13 of the Association's 2017 Constitution which provided that a defaulting member shall not be entitled to any of the privileges of membership.

On 24 February 2022, the Trust applied to the Community Schemes Ombud Service (CSOS) in terms of s 38 of the Community Schemes Ombud Service Act 9 of 2011 (the Act) for an order declaring clause 5.13 of the 2017 Constitution invalid. On 11 August 2022, the adjudicator made an order in terms of which the relief sought by the Trust was granted. The adjudicator declared clause 5.13 to be invalid and set it aside and ordered the Association to remove clause 5.13 from its 2017 Constitution. The Association appealed to the high court in terms of s 57(1) of the Act to have the order set aside. The Association's grounds of the appeal were that the adjudicator erred in law by holding that clause 5.13 is contrary to public policy and accordingly erred in making the adjudication order. The high court upheld the Association's appeal; the order made by the adjudicator was set aside; and the adjudicator's order was replaced by one in which the Trust's application was dismissed. The Trustees thereafter applied in terms of s 16(1)(b) and 17(3) of the Superior Courts Act 10 of 2013 (the SC Act) to this Court for special leave to appeal, which was granted on 5 May 2023.

The primary question in this appeal was whether the high court, constituted by two judges, sat as a court of appeal in respect of the adjudicator's decision under the Act, or as a court of first instance.

The SCA, in reaffirming its decision in *National Credit Regulator v Lewis Stores (Pty) Ltd and Another*, found that s 16(1)(b) of the SC Act should be confined to applications for leave to appeal against decisions of the high court given on appeal to it from other courts within the judicial system. The SCA referred further to the fundamental difference between an appeal from a court and an appeal from a body outside the judicial system, and found that the latter often raised questions of an administrative

nature. The SCA found that the high court was sitting as a court of first instance (from a decision of the adjudicator) and that leave to appeal should have been sought from it as opposed to special leave to appeal from this Court. Accordingly, the SCA held that as leave to appeal was one of the jurisdictional requirements for an appeal to be heard, this Court did not have jurisdiction to hear the appeal.

As a result, it was found that the SCA lacked jurisdiction and had erroneously granted special leave to appeal. The matter was accordingly struck from the roll with costs.

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