**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:** 1 April 2025

**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***

*Uys N O and Others v National Credit Regulator and Another* (869/2023) [2025] ZASCA 34 (1 April 2025)

---

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld an appeal with costs including the costs of two counsel where so employed.

National Credit Regulator (the Regulator) received two complaints from members of the public and initiated an investigation into the conduct of the appellant, Loans Acceptable Funding (Pty) Ltd (LAF) and found that it had been acting as an agent and/or intermediary for the Cornelis Family Trust (the Trust), of which the appellants are the trustees. Upon recommendation of the investigator, an investigation was also initiated into the conduct of the Trust.

During its investigation, the Regulator, in assessing the Trust's business model, in relation to the complaint, found that the Trust would purchase an immovable property from third party sellers and simultaneously conclude a lease with the seller at a monthly rental. The lease agreement provided the seller with an option to repurchase the property from the Trust, subject to the monthly rental being timeously paid, and the option being exercised within a period of one year from the date of the sale and lease agreements. The two complaints received by the Regulator indicated that both complainants had owned fully paid-up immovable properties; they were seeking to obtain cash loans; they had approached third parties to obtain such loans; the loans were refused, and they were referred by LAF to the Trust for an alternative solution. After negotiations with the Trust, the sale and lease agreements were concluded.

The Regulator approached the second respondent, the National Consumer Tribunal (the Tribunal). The Regulator contended that the agreements were credit agreements (the impugned transactions) as defined in the National Credit Act (NCA) and that the Trust was not registered

as a credit provider. The Tribunal subsequently found that the impugned transactions constituted unlawful credit agreements. The Trust launched an appealed to the full court of the Gauteng Division of the High Court, Pretoria (the full court) against the whole of the judgment and order of the Tribunal. The full court confirmed the findings of the Tribunal. Leave to appeal to this Court was granted by the full court.

The primary issue that was considered in this Court was whether the impugned transactions constitute credit agreements as defined in section 8(1)*(b)* read with section 8(4)*(f)* of the NCA, and secondly whether they were disguised or simulated agreements, which were concluded on such terms so as to avoid the provisions of the NCA.

The SCA, per Weiner JA, found that a review of the disputed transactions showed that they did not create, reflect, or suggest any legal obligation for the individuals to repay the property's purchase price to the Trust. Instead, the transactions merely granted an option to purchase the property, which may be exercised by the individual if certain conditions are met. Accordingly, this Court found that there was no basis to conclude that any of the disputed transactions, on their face were simulated and qualify as credit agreements as defined in section 8 of the NCA.

When dealing with the issue of whether the impugned transactions were disguised or simulated agreements, which were concluded on such terms so as to avoid the provisions of the NCA the SCA found that there is nothing impermissible about arranging one’s affairs so as to evade the provisions of the NCA. The SCA further held that for the Court to determine the real intention of the parties and whether an agreement is simulated, it must first be satisfied, on the available and admissible evidence, that there was some unexpressed or tacit agreement between the parties, which was not reflected in the agreement. In the case of a simulated agreement, such as that contended for by the Regulator in the present matter, the parties to the impugned transactions must both have agreed to and intended two things, namely (i) that their transaction is in reality a loan agreement and (ii) that they will frame or otherwise disguise their transaction, to appear to be a sale and leaseback agreement. The SCA further held that the court must make a finding of a real intention, definitely ascertainable which differs from the simulated intention found in the tenor of the agreement.

Ultimately, the SCA held that the Regulator has failed to show that the impugned agreements were disguised credit agreements, which fell to be set aside. The appeal was therefore upheld.

--------oOo--------