



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 judgment of the Supreme Court of Appeal

Kurt Robert Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others
(312/2024) [2025] ZASCA 96 (30 June 2025)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by the appointed business rescue practitioners (the BRPs) of the first to fourth respondents (the companies) against the judgment and order of the Gauteng Division of the High Court, Pretoria (the high court). The appeal concerned whether or not a director of a company under business rescue has the authority to appoint attorneys to act on behalf of the company.

On 21 October 2022, the fifth respondent, Ms Ragavan (a director of the first and second respondents) and the sixth respondent, Mr Archery (a director of the third respondent) purporting to act on behalf of the companies, launched an application for, inter alia, the removal of the first and second appellants as the BRPs of the companies. They also sought a declarator that the third and fourth appellants were not properly appointed as BRPs. Purporting to exercise their powers as directors of the companies, Ms Ragavan and Mr Archery appointed Van der Merwe and Van der Merwe Attorneys (VDM) to act for the companies in the application.

The BRPs disputed the authority of VDM to act for the companies. They delivered a notice in terms of Rule 7 of the Uniform Rules of Court. On 21 November 2022 the respondents filed resolutions and powers of attorney from Ms Ragavan as the director of the companies, purportedly authorising VDM to act for the companies. The BRPs disputed these documents and the authority of VDM. The high court found that VDM was not authorised to represent the first, third and fourth respondents but was authorised to represent the second respondent (Koornfontein). The BRPs therefore applied for leave to appeal against the order in relation to Koornfontein.

In the SCA, the respondents firstly raised the issue of appealability of the order. The Court found that the judgment was appealable in that the effect of the judgment was final and allowed the company to proceed with unauthorised litigation in terms of s 139 of Companies Act 71 of 2008 (the Act). As such, they added, was not an interlocutory application as it was definitive of the party's rights in that regard.

The SCA held that prior to business rescue, and in terms of s 66 of the Act, the board of directors were the only organ of a company with authority to exercise all powers and perform any functions of the company. However, s 66 operates unless the Act provides otherwise. The appointment of BRPs was the 'otherwise' the Act contemplated. In terms of s 137(2), the directors were obliged to continue to exercise their functions but could only do so subject to the authority or express instruction of the BRPs. The Court highlighted that in a voluntary business rescue, the directors were empowered in terms of s 139(3) to appoint a new BRP. But that this does not apply in a business rescue, which is not voluntary. Section 66, according to the Court, was thus restricted by s 139(2).

The SCA clarified that in business rescue proceedings, especially those initiated by court order (non-voluntary), directors do not have the authority to remove a BRP. While directors may appoint BRPs in voluntary rescue proceedings, the Act limited their powers once the rescue process began. The Court emphasised that business rescue is designed to shift control from the board to the BRPs. The Court added that only a court – either on its own or at the request of an affected party – can remove a BRP, and only on specific grounds set out in the law. Affected parties did not include directors or the company. As a result, the SCA upheld the appeal.

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