



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 15 April 2021  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

*Pelham Stephanus Bothma & Others v Tertius Bothma N.O & Another (case no 748/2019) [2021] ZASCA 46 (15 April 2021)*

### **MEDIA STATEMENT**

Today the Supreme Court of Appeal (SCA) dismissed an appeal against an order of the Free State Division of the High Court, Bloemfontein in terms of which the Appellants were ordered to pay an amount of R15 million to the Respondents. Mr Pelham Bothma and businesses aligned to him, were ordered to pay an amount of R15 million to the Respondents, Mr Tertius Bothma (Mr Pelham Bothma's brother) and his wife, as a result of their breach of the terms a settlement agreement concluded between the respective parties.

The parties are involved in a sand mining and distribution business. They had been conducting a sand mining and sales business until they parted ways in 2005. At the time of separation, the parties concluded a separation agreement in terms of which the Appellants would retain all business equipment and machinery. The Respondents were granted a property known as Portion 3 of Farm Londondale 443 together with all

the mining and mineral rights attached thereto. In turn, the Appellants would be responsible for the rehabilitation of the mining site, including the costs thereof.

The Appellants, however failed to fulfil their obligation to rehabilitate Portion 3 in terms of the agreed rehabilitation program, leading to the Respondents approaching the high court for a claim of reasonable costs of the rehabilitation. On 21 November 2014 the dispute was settled and a settlement agreement concluded by the parties was made an order of the high court. The agreement provided that the Appellants would deliver 100 000m<sup>3</sup> clean sand to the Respondents within 6 months from the date of this agreement.

Subsequent thereto, the Respondents again instituted proceedings against the Appellants for their failure to deliver clean sand. They alleged that the soil material delivered by the Appellants was not clean sand, it was not homogenous soil, had no commercial value, and was delivered by the Appellants more than two months after the specified time. They also contended that the material was not delivered to the specified location.

The Appellants contended that they delivered clean sand which was suitable for the rehabilitation of Portion 3. They also alleged that they were not obligated to deliver homogenous material and that the material delivered by them was, in fact, of some commercial value.

The high court upheld the Respondents' claim. In interpreting the meaning of 'clean sand' as stipulated in the agreement, it held that in the building industry clean sand was understood as consisting of homogenous soil material of commercial value which could be used in the construction industry.

On appeal before the SCA the issues were the meaning of 'clean sand' as used by the parties, whether the material delivered by the Appellants was clean sand and whether it was delivered as specified in the settlement agreement.

The SCA restated the applicable legal principles to the judicial interpretative exercise; particularly that the process of giving meaning to the words used in legal documents

entails interpreting the words used in the document, taking into account the context in which they were used. The court cautioned against the admission of inadmissible evidence. It disagreed with the Appellant's argument that the rehabilitation process was the relevant context to the conclusion of the settlement agreement. According to the court the relevant context was the monetary claim that had been instituted by the Respondents. The court held further that the meaning drawn from the context suggested by the Appellants was neither sensible nor made business sense, because if the clean sand was to be used to rehabilitate Portion 3 the Appellants would have to bear the costs of completing the rehabilitation, including re-establishing the topsoil, which had been expressly excluded from the agreement. It found that the sensible interpretation was that the sand was to be sold by the Respondents to raise the funds to rehabilitate the mining site.

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