



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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IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria (504/2023) [2024] ZASCA 109 (4 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing with costs, including the costs of two counsel, an appeal against the Gauteng Division of the High Court's, Johannesburg (the high court) refusal to grant interim relief.

The appellant, a global health delivery and research organisation, was founded in Pakistan in 2004 and registered in Singapore. The respondent, an international organisation established in Switzerland, was involved in the fight against Aids, Tuberculosis and Malaria as donor and implementor of Global Fund-supported programs. Both parties were *peregrini* of the high court and owned no immovable property in South Africa.

On 1 April 2021, the respondent published a report on its website, compiled by its investigating unit, known as the office of the Inspector General (OIG), titled 'Global Fund Grant in Pakistan-Prohibited practices compromised procurement in tuberculosis program'. The report resulted from an investigation into the respondent's tuberculosis grant in Pakistan to Indus Hospital (Indus) in which the appellant had acted as technical assistance provider implementing various tuberculosis-related health projects.

The report, which was globally available on the respondent's website, contained numerous allegations that the appellant considered defamatory. The appellant's South African attorney accessed the website and downloaded the report in Johannesburg. The appellant, on the basis that the report was accessed in Johannesburg, intended to pursue a defamation action in the high court against the respondent. In May 2021, the appellant launched an urgent application in the high court seeking interim relief, among others, that the report be retracted and removed from the respondent's website pending finalisation of the action it intended to institute.

As both parties were *peregrini* of the court, the respondent sought security for its costs. The appellant put up security without admitting that same was due. Tsautse AJ heard the interdict application in which the respondent alleged that the high court lacked jurisdiction to entertain the application. However, as the judgment remained long outstanding, the application was set down for rehearing before another judge. In the

latter hearing the respondent claimed additional security for its costs without conceding the high court's jurisdiction. The high court found in favour of the respondent on both the issues of additional security and on the main application regarding the court's lack of jurisdiction. However, the high court granted leave to appeal to the SCA.

Before this Court the dispute was whether the high court was correct in holding that it did not have jurisdiction to entertain an application for interim relief (the main judgment) and whether that court correctly exercised its discretion when it granted the respondent's application for additional security for its costs (the security judgment).

Regarding the issue of jurisdiction, the SCA found that neither party, both *peregrini*, had any real connection to South Africa. The process was not served in South Africa and the respondent did not have a place of business locally. Although, the respondent actively sought South African donors, such funds were donated directly to grant recipients, therefore the respondent did not have access to the funds in South Africa. The appellant's local affiliate had not joined in the litigation and there was no indication that the publication had any effect on it. There was further no connection between the high court's jurisdiction and the dispute.

The cause of action arose in Pakistan where the appellant and Indus were alleged to have compromised the tuberculosis grant. Therefore, the background facts, convenience and the law governing the relevant transaction were outside the court's area of jurisdiction. The only connection to the high court's jurisdiction was in the attorney having accessed the report in its jurisdiction, which according to the SCA was insufficient. Furthermore, the SCA held that adequate connecting factors for jurisdiction were absent and the court would be unable to give effect to its judgment.

In respect of the issue of security, the SCA held that the trial court exercised a discretion in the strict sense; therefore, it was not open to a court on appeal to interfere with the exercise of the discretion unless it had not been exercised judicially or had been exercised on a wrong principle of law or a wrong appreciation of the facts. The SCA further held that the factors considered included the factual situation; there was no indication that the court overemphasised any factor or exercised its discretion incorrectly. It could therefore not find a ground for interference.

The appeal was thus dismissed with costs including the costs of two counsel where so employed.

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