



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: 21 October 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

Singh v The Body Corporate of St Tropez (Case no 386/2023) [2024] ZASCA 142 (21 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment against an order granted by the Gauteng Division of the High Court, Pretoria (the high court), wherein it upheld the appeal and remitting the application for the sequestration of the estate of the appellant to a differently constituted court. The costs of the appeal were reserved for determination by the high court

This appeal concerned Mr. Lunesh Singh (the appellant), who owns four units in the St Tropez sectional title scheme. Due to his failure to pay levies owed to the Body Corporate of St Tropez (the respondent), several judgments were obtained against him in magistrates' courts, leading the body corporate to seek his sequestration. The body corporate alleged that the appellant was factually insolvent and that sequestrating his estate would be beneficial to creditors.

In November 2021, Mokose J of the high court provisionally sequestered the appellant's estate based on the body corporate's application. The appellant opposed this application but failed to submit his answering affidavit on time. He subsequently filed a rule 30 notice in terms of the Uniform Rules of Court, listing complaints, and later an application to set aside the sequestration application, which was dismissed. The matter proceeded on an unopposed basis, and the provisional sequestration order was granted.

The primary issue on appeal was the failure of Mokose J to recuse herself due to a conflict of interest, which the appellant raised after the provisional order was granted. The conflict arose from the fact that Mokose J was a trustee of the Serai Family Trust (the Trust), which owned units in the same Upper Houghton sectional title scheme as Mr. Singh. The Upper Houghton Body Corporate had previously litigated against the appellant while Mokose J served as its chairperson. This connection, the appellant argued, should have disqualified her from presiding over his case.

The appellant lodged a complaint with the Judicial Conduct Committee (JCC), which upheld his complaint, finding that Mokose J should have recused herself. The JCC stated that she had an indirect interest in the case, given her association with the Upper Houghton Body Corporate and the potential advantage the Trust might gain from the appellant's sequestration.

The SCA held that the duty to recuse is constitutionally mandated in cases where a reasonable apprehension of bias might arise. A judicial officer must recuse themselves when their connection to the matter might suggest an interest in the outcome. The SCA further held that while Mokose J did not have a direct personal interest, her position as a trustee and former chairperson of the Upper Houghton Body Corporate, a potential creditor in the appellant's sequestration, constituted an indirect interest. The SCA found that a reasonable person in possession of all the facts could reasonably apprehend bias.

The SCA concluded that the judicial process must maintain public confidence, and upholding the JCC's findings advanced this objective. The Court stressed that the sequestration application could be reheard by a different judge, ensuring no prejudice to the respondent body corporate.

As a result, the SCA upheld the appeal and set aside the provisional sequestration order. The matter was remitted to the high court to be reheard by a differently constituted bench. The Court reserved the costs of the appeal for determination by the high court.

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