



**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:** 17 DECEMBER 2021

**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*

*Macsteel Tube and Pipe, a division of Macsteel Service Centres SA (Pty) Ltd v Vowles Properties (Pty) Ltd (680/2020) [2021] ZASCA 178 (17 December 2021)*

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issues before the SCA were whether the regional court made a definitive order that cannot be altered in relation to jurisdiction and, in particular, whether the amendment sought had the effect of introducing a new cause of action or a new party in relation to a claim that had prescribed; and whether the order granted by the regional court was appealable.

This appeal arises from an interlocutory application pertaining to the amendment of the particulars of claim in an action that was instituted by Vowles Properties (Pty) Ltd (Vowles) against Macsteel Tube and Pipe, a Division of Macsteel Service Centres SA (Pty) Ltd (Macsteel). On 24 January 2017, the regional court granted an order setting aside the notice of amendment filed by Vowles as an irregular step. On 20 February 2017, Vowles delivered its second notice of amendment in terms of rule 55A(1) (the second rule 55A(1) notice). Macsteel again objected, as result of which Vowles withdrew that notice. On 27 October 2017, Vowles filed another notice of amendment, this time stating that the application was within the contemplation of rule 55A(4) (the October 2017 amendment application). The notice stipulated that Vowles intended to make its application on 2 February 2018 at 09h00. However, on 30 January 2018, Vowles' attorneys filed a notice of withdrawal as attorneys of record. Vowles did not attend the proceedings on 30 January 2018, as a result of which the regional court dismissed that application with costs.

On 19 June 2018, Vowles, having appointed new attorneys of record, delivered a Notice of Motion (the 2018 amendment application) indicating its intention to, in terms of s 111(1) of the Magistrates' Court Act 32 of 1944 (Magistrates' Court Act), alternatively in terms of rule 55A(10), amend the summons by replacing it with a copy appended to the Notice of Motion as Annexure A. Vowles sought a number of orders in the alternative, including an order declaring the proposed amendment as being an amendment of the particulars of claim in compliance with the July 2016 order. Macsteel opposed the application and raised a number of objections.

On 24 October 2018, the regional court granted Vowles leave to amend the particulars of claim and ordered Macsteel to pay the costs of the application. Macsteel was aggrieved by that order and noted an appeal on the basis that the regional court had made findings which were final in effect, which would prejudice Macsteel's conduct in defending Vowles' claim. On 21 November 2018, Macsteel noted an appeal against the whole of the judgment and order of the regional court except the costs order. Before the Gauteng Division of the High Court, Johannesburg (the high court), sitting as a full court, Macsteel submitted that the regional court had erred in allowing the amendment of the particulars of claim.

According to Macsteel, Vowles' application to amend its particulars of claim should have been dismissed. The high court rejected that contention and dismissed the appeal with costs on 20 April 2020. Aggrieved by that order, Macsteel approached this Court seeking special leave to appeal against the order of the high court.

In respect of the issue relating to jurisdiction, the SCA held that the regional court merely recognised the existence of a clause in the parties' agreement purportedly clothing a court in the district having physical jurisdiction over Vowles, with the jurisdiction to adjudicate the action, but did not finally determine the issue of jurisdiction. As regards Macsteel's contention that the amendment of the amount claimed was tantamount to the introduction of a new cause of action that had prescribed, the SCA considered that contention to be without merit on the basis that a plaintiff is not precluded from augmenting its claim for damages if the new claim merely represents a fresh quantification of the original claim. The SCA held that Macsteel's objection to the amendment of its citation was ill-conceived. Relying on the judgments of *Foxlake Investments (Pty) Ltd t/a Foxway Developments v Ultimate Raft Foundation Design Solutions CC t/a Ultimate Raft Design and Another (Foxlake)* [2016] ZASCA 54 and *Blaauwberg Meat Wholesalers CC v Anglo Dutch Meats (Exports) Ltd* [2003] ZASCA 144, respectively, the SCA held that even if it were to be accepted in Macsteel's favour that the regional court's finding in relation to the amendment of the citation of Macsteel was indeed final in effect, that ground of appeal bore no prospects of success, as Macsteel had recognised its connection with the claim notwithstanding that it considered the citation to be flawed.

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