

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA
MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

Fourie NO and others v Edeling NO and others

Supreme Court of Appeal -522/2003

Hearing date: 23 March 2004

Judgment date: 1 April 2004

Liquidation of unlawful pyramid scheme - whether repayment by scheme of participants' contribution was undue preference - whether payment by scheme of gains to participants was a disposition without value.

Media Summary of Judgment

From: The Registrar, Supreme Court of Appeal

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

[1] One of the largest pyramid investment schemes in South African history was liquidated some years ago. In its short existence it attracted some 8 000 investors and had a turn-over of R1,5 billion. It had no real source of income. The investments of investors, who were falsely led to believe that their money was being used to fund micro-lending activities, were instead used to pay earlier investors when repayments of their claims for capital and interest fell due. As all such schemes do sooner or later, it collapsed when the inflow of funds could no longer sustain the outflow of extravagant returns to investors. On liquidation many thousands of participants lost their money.

[2] A dispute developed between the liquidators of the scheme and a representative for the investors on the one hand and three of the investors on the other whether capital dispositions by the scheme before its liquidation could be recovered for the benefit of creditors of the scheme.

[3] The liquidators' contention before the Pretoria High Court was that such amounts had been paid out by the scheme with the intention of preferring certain creditors over others and that the payments could on that footing be set aside as undue preferences under the law relating to insolvency. The High Court held that the liquidators of the scheme were not entitled to reclaim from investors the amounts that they had invested in the scheme and that had been repaid to them before the liquidation of the scheme. The Supreme Court of Appeal held that this approach was the correct one.

[4] It also agreed with the High Court that since the whole scheme was a fraud, payments of the enormous amounts of 'interest' paid by the scheme to investors were

illegal. Illegal payments are classified as dispositions without value. The liquidators of the scheme are therefore under the law relating to insolvency entitled to recover these dispositions from investors.