In the Supreme Court of Appeal of South Africa
MEDIA SUMMARY –

In the matter between :

SENWES LIMITED	FIRST APPELLANT
SENWESBEL LIMITED	SECOND APPELLANT
VAALHARTS CO-OPERATIVE LIMITED	THIRD APPELLANT

and

JAN VAN HEERDEN & SONS CC	FIRST RESPONDENT
CHARLES ENGELBRECHT	SECOND RESPONDENT
LOUIS J FOURIE	THIRD RESPONDENT
CHARLES H DU P MARTINSON	FOURTH RESPONDENT
TIELMAN C L MEYER	FIFTH RESPONDENT
SUSANNA K OTTO NO	SIXTH RESPONDENT
PETRUS P V VAN WYK	SEVENTH RESPONDENT

From: The Registrar, Supreme Court of Appeal
Date: 2007-03-23
Status: Immediate

On 23 March 2007 the SCA delivered judgment in the appeal of Senwes Ltd against Jan van Heerden & Sons CC and six other respondents. The matter arose from a transaction between Senwes and Vaalharts Co-operative which was concluded at the end of 1996. In terms of the transaction, Senwes took over the business of Vaalharts as a going concern. Prior to the transaction, Van Heerden & Sons and the other six respondents were members of Vaalharts. The Senwes transaction was predicated on the condition that all Vaalharts members would resign, which they then did. Prior to their resignation, members had claims against Vaalharts for repayment of the amounts standing to their credit

in the Vaalharts members' levy fund. As part of the package deal offered by Senwes, members were given an option to secure payment of their levies in cash, or to exchange them for Senwes shares. All the respondents were part of the group who chose the share option.

During 1997 effect was given to the terms of the Senwes transaction. Levy claims of the members who opted for shares were ceded to Senwes and these members received a number of shares allocated to them in accordance with the formula upon which the parties agreed. Before long, however, some of them were dissatisfied with the result of the transaction and particularly with the value of the shares they received.

In November 1999 the dissatisfaction led to the institution of separate actions by about 160 erstwhile members of Vaalharts against Senwes in the Kimberley High Court for payment of their members' levies against return of the shares they received. By agreement between the parties the cases of the six respondents were consolidated and proceeded with as a test case. The consolidated action was postponed on many occasions and stretched over a number of years. Eventually the High Court gave judgment in favour of the respondents on 19 August 2005.

The High Court's judgment was based on the premise that the agreement between Vaalharts and its members which preceded the Senwes transaction constituted an 'arrangement' as contemplated by s 169A of the Co-operatives Act 91 of 1981. In terms of this section, so the court found, the agreement thus required the sanction of the court. Because the court's sanction had not been obtained, the court concluded, the agreement was invalid and the respondents were thus entitled to payment of their members' levies against return of the shares they received.

On appeal the SCA, however, upheld the contention by Senwes that, on a proper interpretation of s 169A, the agreement between Vaalharts and its members did not constitute an arrangement under that section. Consequently, it decided that the High Court's judgment was based on a wrong premise. In the result the appeal succeeded with costs.