

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 29 March 2007

Status: Immediate

*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*

**GUTSCHE FAMILY INVESTMENTS (PTY) LTD & OTHERS**

**v**

**METTLE EQUITY GROUP (PTY) LTD & OTHERS**

The Supreme Court of Appeal today dismissed, with costs, an appeal by Gutsche Family Investments (Pty) Ltd; Formex Holdings (Pty) Ltd; The Trustees For The Time Being Of The Lynch Trust (the appellants) against a finding by the Johannesburg High Court reviewing and set aside an award by an appeal arbitrator against Mettle Equity Group (Pty) Ltd. The appeal arbitrator had on 17 January 2005 directed Mettle Equity to pay the appellants the capital sum of R 9 310 729,78 with interest after dismissing Mettle Equity's objection to his jurisdiction. The dispute arose from a sale agreement between the parties.

There were two issues that the SCA was concerned with. The first was whether an arbitrator's dismissal of the appellant's exception to Mettle Equity's pleadings was appealable to an appeal arbitrator; secondly whether the appeal arbitrator could finally determine this question in the context of an arbitration agreement.

The SCA decided that the rules under which the parties had conducted the arbitration provided that the appealability of any interim award and the jurisdictional power of an appeal arbitrator depend on whether the matter would be appealable to the SCA. And because, so the SCA found, the dismissal of an exception in the high court is thus not appealable to the SCA, the dismissal of an exception by an arbitrator was likewise not appealable to an appeal arbitrator. It accordingly found that by assuming jurisdiction over the appeal and then proceeding to hear and decide the merits of the appeal the appeal arbitrator had exceeded his powers.