

Supreme Court of Appeal of South Africa

MEDIA SUMMARY

From: The Registrar, Supreme Court of Appeal

Date: Thursday, 31 May 2007

Status: Immediate

**BOTHA v GIYOSE t/a PARAGON FISHERIES**

In February 2003 Mr Botha sold his fast food business to Mr Giyose for R90 000. Mr Giyose took-over the business but made no payment, claiming Mr Botha had abandoned the business and he had taken over the abandoned business. Mr Botha successfully sued Mr Giyose for payment of the R90 000 in the Queenstown Magistrates' court. On appeal to the High Court, Grahamstown the court found that the business belonged to a close corporation of which Mr Botha was a member and that he should have sued in the name of the close corporation.

The Supreme Court of Appeal set aside the High Court's judgment on the basis that Mr Botha was entitled to sue in his own name. It further held that as Mr Botha had not lawfully cancelled the contract he was only entitled to payment of the initial amount of R45 000 and the monthly instalments which had fallen due as at the date of institution of action in the magistrates' court.

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