



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 28 November 2008

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.

Letseng Diamonds Ltd v JCI Limited & Others and Trinity Asset Management (Pty) Ltd & Others v Investec Bank Ltd & Others

The Supreme Court of Appeal yesterday granted appeals by shareholders in JCI Limited against a judgment delivered in the Johannesburg High Court by Mr Justice Bliden in which he held that they had no *locus standi* to ask for a declaratory order as to whether an agreement concluded between JCI Ltd and Investec Bank Limited was binding.

Under the agreement Investec Bank Ltd lent and advanced amounts totalling over R1 billion to JCI Ltd, which were repaid with interest. The agreement provided that in addition to interest on the sums advanced JCI Ltd had to pay to Investec Bank Ltd what was described as a 'raising fee', amounting to R50 million or 30 per cent of the aggregate increase in the value of the assets which JCI Ltd furnished as security for its indebtedness, whichever was the greater. At the time of the application before the Johannesburg High Court the 'raising fee' amounted to a sum substantially in excess of R400 million.

In two separate applications which were argued before Mr Justice Bliden shareholders of JCI Ltd, Letseng Diamonds Ltd and Trinity Asset Management (Pty) Ltd and two other associated companies sought among other things orders declaring that the agreement between JCI Ltd and Investec Bank Ltd was not binding for various reasons. A general meeting of JCI Ltd had been convened to consider a proposal that the agreement be ratified.

The Supreme Court of Appeal in a majority decision delivered by Appeal Justice IG Farlam, with whom Appeal Justices Mthiyane, Maya and Cachalia concurred, held that the applicants did have *locus standi* to ask for the declaratory orders they sought because they had the right as shareholders to have accurate information furnished to them and their fellow shareholders and the right to an order stopping the meeting if inaccurate information was granted in the circular convening the meeting. It was held that the Johannesburg High Court had incorrectly held that they lacked *locus standi* to seek the declaratory orders. This was because the applicants were entitled to attempt to show that the circular was inaccurate. In his minority judgment Appeal Justice Jafta held that the applicants' right to a full and accurate disclosure of information they needed to exercise their vote either for or against ratification of the agreement did not give them legal standing to challenge the validity of the agreements as only the contracting parties could raise that challenge.