



# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 23 September 2011  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Cassim v Voyager Property Management (Pty) Ltd  
(574/10) [2011] ZASCA 143 (23 September 2011)***

### **Media Statement**

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellants, the sisters Cassim – Shereen and Neilophar, against an order of the KwaZulu-Natal High Court (Durban) that they lacked *locus standi* to prosecute certain claims on behalf of the St Moritz Body Corporate.

The facts of the case are briefly as follows. In 1992, the appellants, together with their mother, purchased three sectional title units in what they thought was a prestigious block of flats known as St Moritz, which is located at the corner of John Milne and West Streets in Durban. By 2001, however, the appellants had become concerned at what they perceived to be mismanagement of the building. They instituted a series of high court applications. Those applications were consolidated and referred to trial. In their declaration the appellants advanced seven claims. Only three were relevant to the appeal. The first sought information pertaining to the affairs of the body corporate. The second sought to set aside a loan agreement that had been concluded by the body corporate with one of the other respondents and the third sought a statement of account in respect of financial transactions of the body corporate for a specified period. The respondents denied that the appellants had the necessary *locus standi* to institute those proceedings. The trial judge upheld the respondents' plea which was decided preliminarily as a separated issue in terms of high court rule 33(4).

It is against that conclusion that the appellants appeal. Section 41 of the Sectional Titles Act states that when an owner is of the opinion that he, she or it and the body corporate have been deprived of any benefit in respect of certain matters mentioned in s 36(6) of the Act and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, the owner may institute proceedings on behalf of the body corporate in the manner provided in the section, namely the owner must first serve a notice on the body

corporate calling upon it to institute the proceedings in question, and if it fails to do so, the owner may make an application to court for the appointment of a curator ad litem for the body corporate for the purposes of instituting and conducting the proceedings on behalf of the body corporate.

The SCA held that as the appellants' three claims were encompassed by s 36(6), they were obliged to follow the procedure set out in s 41. Not having done so, they lacked locus standi to institute the proceedings. The SCA accordingly dismissed the appeal.

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