



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

xx November 2011

STATUS: Immediate

Master of the High Court GNP v Motala NO (172/11)

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

The Supreme Court of Appeal (the SCA) today upheld an appeal from the North Gauteng High Court (Pretoria) wherein Legodi J found that the appellant, the Master of the North Gauteng High Court, was in contempt of an earlier order by Kruger AJ.

The North Gauteng High Court, per Kruger AJ issued an order placing the fourth respondent, Realeka Investments SA (Pty) Ltd, under judicial management and appointing the second respondent, Mabuthu Mhlongo and a Mr van Vuuren as the judicial managers. The appellant declined to appoint Mr van Vuuren and appointed the 1st, 2nd and 3rd respondents, Enver Motala, Mhlongo and Amoure Yeun, as judicial managers. The Master was interdicted by Mr van Vuuren from appointing the respondents as judicial managers in terms of s 430 of the Companies Act 61 of 1973. The respondents in turn interdicted Mr van Vuuren from carrying out any of the functions of a judicial manager. Mr van Vuuren approached the high court for the discharge of the interdict and the high court, per Legodi J, raised *mero motu*, the issue of the Master's contempt of the order appointing Mr van Vuuren. The high court found the Master in contempt and the appeal is against these orders.

The SCA found the reasoning and conclusion of the high court untenable. Relying on precedents and the wording of s 429 of the Companies Act, the SCA held that only the Master has the power to appoint a judicial manager. The SCA held that the high court was not empowered to and therefore was incompetent to have issued the order that it did and the learned judge in the case had usurped a power that he did not have which had been expressly left to the Master by the Companies Act for himself. The SCA found the order to be a nullity which defeated the provisions of a

statutory enactment and was of no force and effect. The SCA also found that the order of the court could not have directed the Master to appoint Mr van Vuuren, hence, the Master could not have disobeyed the order.

The SCA subsequently held that the order of the high court that the Master had acted in contempt could not be supported. The SCA set aside the order of the high court.

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