



## THE 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** 29 November 2012  
**STATUS** Immediate

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

*Communicare & others v Khan & another*  
(12/2012) [2012] ZASCA 180 (29 November 2012)

#### **Media Statement**

The Supreme Court of Appeal held today that the rights of members of a company to vote at general meetings of the company, in respect of the election of directors, constitute personal rights of the members, as opposed to corporate rights of the company. These personal rights are accordingly beyond the control of the majority of members at general meetings of the company, and individual members may enforce these rights by way of a personal action against the company.

A dispute arose between the appellant companies (Communicare and Communicare Construction) and the respondents (Messrs Khan and Tilney), who were members of the appellants, concerning the election of directors to fill vacancies created by the retirement of directors, in terms of the appellants' articles of association. The articles provided that the directors were also members of the companies. The retiring directors were precluded from voting on the election of directors to fill the vacancies, on the basis that having retired, they were no longer directors and as a consequence, no longer members of the companies. On a businesslike interpretation of the articles, it was held that there was a seamless transition of directors and any vacancy only arose and was immediately filled by the election of a successor. The retiring directors' exclusion from voting was accordingly invalid and set aside.

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