



**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
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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.

**MANTIS INVESTMENT HOLDINGS (PTY) LTD v EASTERN CAPE DEVELOPMENT
CORPORATION & OTHERS**

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Mantis Investment Holdings (Pty) Ltd (Mantis) by the Eastern Cape Local Division of the High Court, Port Elizabeth (the high court) in favour of the Eastern Cape Development Corporation (ECDC). The appeal had its genesis in a suretyship issued by a company known as No 1 Watt Street (Pty) Ltd (the company in liquidation) in favour of the ECDC in respect of moneys loaned and advanced by the ECDC to the Bushman Sands Developments (Pty) Ltd (Bushman Sands). Bushman Sands was unable to repay the amount and as a result ECDC instituted action in the high court against Bushman Sands and the company in liquidation claiming respectively repayment of the loan and enforcement of the suretyship undertaking in the amount of R19 357 645. Several defences were raised by the company in liquidation to the claim, but shortly before the commencement of the trial Mantis as the sole shareholder of the company in liquidation, successfully applied for its liquidation.

After the second meeting of creditors at which the claim of the ECDC was admitted, Mantis' attorney wrote to the liquidators setting out a list of persons and documents they desired to have subpoenaed. That request was forwarded by one of the joint liquidators to the Master, who summoned a number of employees (past and present) of the first respondent to appear before him. Aggrieved, the ECDC successfully applied to the high court to review and set aside the subpoenas issued by the Master.

On appeal, the SCA held that it is the very essence of our Bill of Rights that an individual should not be subjected to unreasonable intrusions on their liberty or the privacy of their person, property or effects. The Master has no reservoir of power outside the statutory instruments that authorise an intrusion upon those rights and thus no general authority to make an order that impinges on those rights. Neither the Master nor the liquidator, who forwarded the request to the Master, deposed to affidavits in this matter. It was thus unclear what the legal basis was for the request to the Master or what the true legal basis was for the Master to issue the subpoenas. The SCA accordingly confirmed the conclusion reached by the high court, albeit for different reasons.