



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 3 June 2019

**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.***

***Gold Circle (Pty) Ltd v Maharaj (1313/17) [2019] ZASCA 93 (3 June 2019)***

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Today the Supreme Court of Appeal (SCA) granted an application for leave to appeal by the applicant and remitted the matter to the Equality Court for a hearing *de novo* before any presiding officer.

In 2008, Mr Maharaj, a professional racehorse trainer, instituted proceedings in the Equality Court alleging that the applicant, a racing operator, had unfairly discriminated against him on racial grounds when it denied him stabling facilities and funding after the expiry of the period of suspension of his training licence. In its defence, Gold Circle alleged that the reasons for denying Mr Maharaj's request was based on his previous misconduct, coupled with his failure to settle arrear rent owed to Gold Circle. This initial claim was dismissed by both the Equality Court and the KwaZulu-Natal High Court on the basis that Gold Circle's reasoning was sound.

In 2016, after a similarly unsuccessful application for stabling facilities, Mr Maharaj referred another unfair discrimination complaint to the Equality Court on the argument that, amongst others, Gold Circle's treatment towards him was discriminatory insofar as white trainers who had committed similar transgressions were still afforded stabling facilities. The Equality Court held that he had not raised any new issues and accordingly upheld the special plea of *res judicata* in the form of issue estoppel. Mr Maharaj appealed to the KwaZulu-Natal High Court which upheld the appeal and remitted the matter to the Equality Court for a hearing *de novo* before a magistrate other than the original presiding officer.

Gold Circle was dissatisfied with the court a quo's findings and approached the SCA asking for leave to appeal against that judgment. The application for leave to appeal was referred for oral argument and the parties were directed to be prepared to argue the merits of the appeal. The first issue was whether Gold Circle should be granted leave to appeal. The second issue was whether the court a quo was correct in not upholding the special plea of *res judicata*. The final issue was whether, if the matter is remitted, the magistrate who heard the original matter would be precluded from hearing it *de novo*.

The SCA engaged with the common law relating to *res judicata* and concluded that given that the issues raised by Mr Maharaj were new facts that might undermine the reasons given by Gold Circle in 2008, the finding of *res judicata* in the form of issue estoppel had been an error on the part of the Equality Court. Mr Maharaj should therefore not have been precluded from placing evidence before the Equality Court. It consequently held that the court a quo had correctly remitted the matter to the Equality Court for a hearing *de novo*. However, the SCA held that the court a quo had failed to exercise judicial restraint in reaching its decision to remit the matter before a presiding officer other than the original magistrate. It held that there was no cogent reason why the original presiding officer should be precluded from presiding over the matter in a *de novo* hearing. Thus, it granted leave to appeal and altered the order of the court a quo. Finally, regarding the question whether the remitted issues should be circumscribed, the SCA held that it could not prescribe how the adjudication of the matter at the Equality Court should unfold. It accordingly dismissed the appeal and remitted the matter to the Equality Court for a hearing *de novo* before 'any' presiding officer.