

## Supreme Court of Appeal of South Africa

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

From: The Registrar, Supreme Court of Appeal

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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.

#### **Airports Company SA Ltd v Maziphuse Trading (Pty) Ltd and Others [2019] ZASCA 15 0**

The SCA today upheld an appeal against the judgment of the KwaZulu-Natal Division of the High Court, Durban dismissing a claim based on a deed of suretyship by ACSA against Mr Ntavhanyeni Nemukula. The claim arose from the lease of retail premises in King Shaka International Airport for the purpose of running a Wimpy franchise. Schedule 5 to the lease was a deed of suretyship that ACSA required all the directors of the lessee company to sign. It was signed by all three directors and returned to ACSA, which then signed the lease.

When the lessee fell in arrears with payment under the lease ACSA cancelled it and sue the lessee for the amounts outstanding and the three directors under the deed of suretyship. Mr Nemukula advanced two defences to the claim. First, he said that when he signed the deed of suretyship it was incomplete in that it did not identify the sureties or the principal debtor and this information was added later. Accordingly he contended that it was invalid in terms of s 6 of the General law Amendment Act, 1956 which requires deeds of suretyship to be in writing and to contain all the terms of the contract. His second defence was that his co-directors had not told him that he was signing a deed of suretyship and he did so in

the mistaken belief that he was signing in the execution of the lease. The high court upheld the first of these defences.

The SCA held that because the deed of suretyship said that the sureties were 'the undersigned' and all three directors signed the document on the last page their identity as sureties was clear. As regards the principal debtor the deed said this was the lessee and it was permissible to look at the terms of the lease to which the deed of suretyship was attached to identify it. Accordingly the deed of suretyship complied with the requirements of the statute.

As regards the defence of justifiable error Mr Nemukula had not been misled by ACSA into signing the deed. The error, if there was one, was one of his own causing in not reading commercial documents that he was signing as part of a commercial transaction. It was not a justifiable error. Accordingly the appeal was upheld and an order made declaring Mr Nemukula to be liable to ACSA in terms of the deed of suretyship. The issue of quantum was remitted to the high court for determination.