



SUPREME COURT OF APPEAL, SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 28 March 2019

STATUS Immediate

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

Atwealth (Pty) Ltd & others v Kernick & others (116/2018) [2019] ZASCA 27 (28 March 2019)

The Supreme Court of Appeal (SCA) today upheld an appeal from an investment advisor and her employers who had been held liable by the High Court for significant financial loss suffered by investors as a result of investments into which they entered following a presentation by the financial advisor.

Investments which they made were in hedge funds which were operated by ABANTE which company had been controlled by Mr Herman Pretorius who shot his business partner and committed suicide in July 2012. The funds controlled by Mr Pretorius turned out to be nothing more than part of the Ponzi scheme.

When ABANTE collapsed, investors including those who are parties to this case found that the investments were worthless.

The Supreme Court of Appeal found that in order to prove that the investment advisor had acted wrongfully and negligently, it was necessary to show that a reasonable skilled

investment advisor in 2009 and 2010 when the investments were made following the advise of the advisor would have cautioned any investor from investing in these hedge funds. No expert evidence was lead by the respondents to show that this would have been the case. For this reason, the court found that there was insufficient evidence to hold that the appellant's conduct was of a kind that no reasonable financial advisor would have given.

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