



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: 8 April 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Organi Mark (Pty) Ltd v Goolam Nabi Ebrahim Akoodie and Another (240/2023) [2024] ZASCA 44 (8 April 2024)

Today, the Supreme Court of Appeal, per Coppin AJA (Ponnan, Schippers, and Matojane JJA and Mbhele concurring), handed down a judgment dismissing an appeal by a South African company against the dismissal by the Gauteng Division of the High Court, Pretoria (the high court) of an application in which it sought to hold former directors of an eSwatini company (in liquidation in eSwatini) personally liable for the debts of that company under eSwatini's company law.

Organi Mark (Pty) Ltd (Organi Mark), a South African company, brought an application in the high court in which it sought to hold two former directors of Spintex Swaziland (Pty) Ltd (Spintex), a liquidated eSwatini company, personally liable for the debts of that company in terms of s 361 of the Swaziland Companies Act 8 of 2009 (the Swaziland Companies Act). Organi Mark alleged that these directors allowed the company to trade recklessly. The directors, who at the material time were residents in the high court's area of jurisdiction, raised a special plea that the court lacked jurisdiction to apply and enforce the Swaziland Companies Act. The high court upheld the special plea, and Organi Mark appealed to the SCA.

The SCA found that for a court to assume jurisdiction, there must be a valid '*ratio jurisdictionis*' or a jurisdictional basis under common law principles. The mere residence of the directors in South Africa was not a sufficient jurisdictional basis to apply eSwatini's company law statute. Secondly, the subject matter related to the alleged mismanagement of an eSwatini company, whose liquidation was being overseen by eSwatini's courts. The SCA found that in so far as s 361 of the eSwatini Companies Act referred to a 'court', it only referred to the courts of eSwatini. Section 361 is part of eSwatini's domestic company law and has no extraterritorial effect. As a result, the SCA ruled that the South African court

lacked jurisdiction in respect of Organi Mark's claim, which was based on the Swaziland Companies Act. Accordingly, Organi Mark's appeal was dismissed with costs.

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