



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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 judgment of the Supreme Court of Appeal.

Rabinowitz v Levy and Others (Case no: 1276/2022) [2024] ZASCA 8 (26 January 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, upholding with costs, an appeal against a decision of the full court of the Gauteng Division of the High Court, Johannesburg (the full court), which had reviewed an arbitrator's award and set it aside.

The appellant, as seller, and the first and second respondents, as buyers, had concluded a sale agreement relating to the sale of shares in a private company. Various disputes arose between the parties. These disputes were referred to arbitration before the fourth respondent. After the arbitrator had heard the evidence and arguments, an email was addressed to the arbitrator by the seller's counsel, with the concurrence of the buyers' counsel, suggesting various procedures to be followed in disposing of certain outstanding issues which might remain, depending on the terms of the arbitrator's findings. The effect and interpretation of the terms of this email assumed primary importance after the award was published.

Dissatisfied with the findings of the arbitrator, the buyers sought to review the arbitrator's award in the Gauteng Division of the High Court (the high court), contending inter alia that the terms of the email had not been complied with. The review was dismissed with costs. The buyers' subsequent appeal to the full court, however, succeeded and the full court reviewed and set aside the award. It further directed that the arbitration starts afresh before another arbitrator.

On appeal to the SCA the order of the full court was set aside and substituted with an order that the appeal from the high court to the full court be refused with costs, thus restoring the order of the high court. The SCA concluded, contrary to the arguments of the buyers, that: the terms of the email could not validly have varied the arbitrator's terms of reference; that the email in any event did not constitute an attempt to vary the mandate of the arbitrator and simply contained suggestions for the arbitrator to consider in executing his mandate to decide the arbitration in an expeditious manner; and finally, that the arbitrator could not be criticized for deciding the quantum of a stock claim without further evidence as the quantum was clear. A further argument that the arbitrator had not discharged his mandate in failing to decide one claim, was also rejected by the SCA on the facts of the matter. The arbitrator was found to have decided all the issues which arose for determination. He had not committed any reviewable irregularity.

Lastly, the SCA specifically restated the principles relating to the review of arbitrator's awards: that a

court should not lightly interfere with an arbitration award; that courts should bear in mind the purpose of private arbitrations which include the fast and cost effective resolution of disputes; and that if courts were too quick to find fault with the manner in which an arbitration had been conducted, the goals of private arbitrations may well be defeated.

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