



## 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** 30 May 2017

**STATUS** Immediate

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

*Lazarus Mbethe v United Manganese of Kalahari (503/2016) [2017] ZASCA 67 (30 May 2017)*

#### **Media Statement**

The High Court dismissed an application brought by the appellant for leave to institute a statutory derivative action in the name and on behalf of the respondent company, in terms of s 165(5) of the Companies Act 71 of 2008. The SCA dismissed the appeal holding that the appellant had failed to discharge the onus of proving good faith. The test to determine this was subjective with objective control. The appellant's state of mind was to be determined by drawing inferences from the objective facts. The absence of a collateral purpose on the part of the appellant was not a self-standing requirement of good faith, but was relevant to determine whether the issue was 'of material consequence to the company'. All of the requirements of s 165(5)(b) had to be satisfied before relief could be granted but the court retained a controlling discretion whether to grant relief, or not. Whether alternative means were available to obtain the same relief, was of relevance in determining whether the proposed action was in 'the best interests of the company'.

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