



**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 6 October 2021

STATUS Immediate

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

NBC Holdings (Pty) Ltd v Akani Retirement Fund Administrators (Pty) Ltd (299/2020) 2021 ZASCA 136.

This appeal arose out of review proceedings in the Gauteng Division of the High Court, Johannesburg. The proceedings were directed at challenging the removal of the appellant, NBC Holdings, from its position as administrator of the Chemical Industries National Provident Fund, and its replacement by the respondent, Akani Retirement Fund Administrators. The review was brought as a matter of urgency and on 12 March 2020 an order was granted staying the transfer and preserving the status quo pending the final determination of the review. The order provided for the further conduct of the review with a view to it being disposed of by 31 July 2020.

After this order had been granted, NBC wrote to employers associated with the Provident Fund saying that:

'The court handed down judgment today (12 March 2020), having found strong evidence of corruption in the matter at hand and that the appointment of Akani was unlawful.

The interdict remains in force until 31 July 2020 unless extended by the court of its own accord or upon good cause being shown.'

Akani brought urgent application proceedings seeking an order compelling NBC to publish a retraction of this portion of the letter on the grounds that it did not accurately reflect the judgment leading up to the interim order and was defamatory of Akani. The case was heard on the papers as a matter of urgency and an order was made providing for NBC to write a retraction to the recipients of the previous letter. The terms of the retraction were set out in considerable detail in the order and involved an explanation that the order had been made in preliminary proceedings and was not a final determination of the issues. In particular, it had not held that Akani was corrupt or that its acquisition of the administration contract was unlawful. The SCA upheld the appeal today and set aside the high court's order on three grounds. First it held that there was a factual dispute in the affidavits over the existence of defences to the claim and the extent of the damage to Akani's reputation. This dispute debarred the grant of relief without hearing oral evidence. Second, the court held that there was a misdirection in the approach adopted in the high court to its discretion in regard to the grant of relief. Third, it held that the statement in the letter did not convey that a final order had been made and because facts were advanced in support of defences available to NBC and Akani had not asked for oral evidence to be led, the application had to fail.