



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 16 March 2017
STATUS Immediate

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

*Richard Du Plessis Barry v Clearwater Estates NPC & others (187/2016)
[2017] ZASCA 11 (16 March 2017)*

Media Statement

The SCA dismissed an appeal against an order by the High Court, refusing an application in which an order was sought declaring that all the business and resolutions transacted at a special general meeting held by Clearwater Estates NPC, were unlawful and void. The decision of the High Court was based upon a finding, which was upheld, that a provision in the Memorandum of Incorporation of Clearwater Estates NPC, which provided that the instrument appointing a proxy had to be deposited at the office of the company 'not less than 48 hours before the time appointed' for holding a meeting, (otherwise it would not be treated as valid), was inconsistent with the provisions of section 58(1) of the Companies Act 71 of 2008 and was accordingly void. The section was an unalterable provision in the Act and provided that a shareholder of a company may appoint a proxy 'at any time'. The Memorandum of Incorporation impermissibly sought to alter the effect of this section, contrary to the prohibition contained in s 15(2)(d), and was accordingly inconsistent with the Act and void in terms of s 15(1)(b) of the Act.

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