



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 26 March 2019
STATUS Immediate

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

National Home Builders Registration Council v Adendorff & others [2019] ZASCA 20

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant and declared that trusts are home builders as envisaged in ss 1 and 10(1) of the Housing Consumers Protection Measures Act 95 of 1998 (the Act).

The appellant, the National Home Builders Registration Council (the NHBRC) sought certain declaratory and interdictory relief in the Limpopo Division of the High Court, Polokwane (the High Court), against the first to fourth respondents, both in their personal capacities and in their representative capacities as trustees of Mike’s Trust (the Trust) as it was not registered as a home builder in terms of the Act. The primary contention advanced by the Trust, was that since a trust was not a person, it was not required to register as a home builder in terms of the Act. The question therefore was not whether the Trust should be afforded juristic personality but whether a trust was included in the ambit of the Act to which registration as a home builder applied.

The issue for determination before the SCA was therefore whether, on a proper interpretation of the statute, a trust engaged in the building of homes was ‘a person’ as contemplated in s 10(1) of the Act.

On appeal the SCA held that on a proper interpretation of the Act, there was only one ineluctable conclusion, which was that the legislature intended that a ‘trust’ be included as ‘a person’ in s 10(1) of the Act for purposes of registration and enrolment.

The SCA found that the purpose of the Act was to promote housing consumer rights and improve the structural quality of homes in the interests of housing consumers and the home building industry.

The SCA held therefore that to exclude trusts from the ambit of the Act would result in a consequence which was arbitrary and unjust and therefore the appeal had to be allowed.