

# Insurance Claims Africa



**17 DECEMBER 2020**

**Press release from Insurance Claims Africa (ICA)**

## **ICA welcomes SCA ruling against insurers in Café Chameleon case, calls for immediate pay-out of claims**

- No need for Santam to appeal Ma-Afrika, as Guardrisk SCA decision sets precedent for all insurers

- Link to SCA judgment (PDF also attached to email):

<https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/33-judgments-2020/3490-guardrisk-insurance-company-limited-v-cafe-chameleon-cc-case-no-632-20-2020-zasca-173-17-december-2020?Itemid=0>

Johannesburg, 17 December 2020 --Specialist public loss adjuster, Insurance Claims Africa, today welcomed the Supreme Court of Appeal's decision in favour of insurance claimant, Café Chameleon, and says that now that legal certainty has been established, there should be nothing left for insurers to do but resolve their customers' claims, for once and for all.

The Supreme Court of Appeal dismissed the appeal ordering Guardrisk to settle Café Chameleon's full claim and legal costs.

The Supreme Court of Appeal bench which heard the appeal was made up of five judges: Justices Cachalia, Saldulker and Mbha, and acting judges Ledwaba and Eksteen.

The judgment categorically stated that the government's imposition of a lockdown in response to multiple outbreaks of a 'notifiable disease' i.e. Covid-19, throughout the country, and predominantly in Cape Town, where Café Chameleon's operates its business, was covered by the infectious diseases clause.

The judgment further stated it was fortified by much of the reasoning in the UK's Financial Conduct Authority test case and two recent judgments of the Western Cape High Court: Ma-Afrika Hotels and Another v Santam Limited and Interfax (Pty) Ltd and Another v Old Mutual. The SCA judgment is precedent setting for all other Business Interruption insurance cases being heard in lower courts across the country, as well as in the Ma-Afrika vs Santam appeal. Indeed, on Santam's attorneys' own version, the ruling obviates the need for an appeal in the Santam application.

Ryan Woolley, CEO of Insurance Claims Africa, says, "The Café Chameleon ruling against Guardrisk is a significant win for an industry that has suffered tremendous losses. As South Africa faces a second wave of the COVID-19 pandemic, hope of survival is fast evaporating for many of these businesses who were counting on the summer holidays to carry them through to 2021. The latest statistics show that Cape Town hotel occupancy is sitting at a devastating 18%. The rest of the country is in a similar position. Without urgent payouts from insurers, many doors are going to close and many more thousands of jobs are going to be decimated. The time has come for insurers to stop hiding behind their legal teams, and to honour their customers' claims. We call for immediate resolution of all valid claims."

"For ten months, companies in the insurance sector have erected one obstacle after another in their determination not to meet their obligations to their customers. Their Stalingrad tactics have broken the trust between them and their customers, and tattered their reputations. As a result, the perception has been created that these insurers operate from a position of doing whatever they can to get out of paying claims. We believe that unless Insurers stop the fight and start settling claims this will have consequences for these companies for many years to come.

"We congratulate our partners Nico Schoeman of Café Chameleon, their attorney Ren Dunster and our legal team advocates Thomas Tyler, Jason Mitchell, Porchia Long, Sean Rosenberg SC and Jeremy Gauntlett SC QC.

"We again applaud South Africa's Financial Services Conduct Authority (FSCA) in their approach to these claims and ask that they now once again support us in the request for these claims to be settled without delay," says Woolley.

Comment from Café Chameleon re Guardrisk SCA judgment:

Ren Dunster, attorney for Café Chameleon, says he and his client Nico Schoeman are thrilled with the judgment.

"We applaud the urgency and clarity with which the judges dealt with the matter. We are privileged to have such a strong judiciary in South Africa."

Comment from Ma-Afrika Hotels re implications for its case against Santam:

André Pieterse, Chairman / CEO of Ma-Afrika Hotels, says: "We join hands with Ryan Woolley of Insurance Claims Africa in congratulating Café Chameleon on their significant win and the impact that this will have on all legitimate claims. We call on Santam Insurance to forgo their attempt to further delay payment of claims and to withdraw their application for a right to appeal the Full Bench decision of the Cape High Court wherein Santam Insurance lost its case against Ma-Afrika Hotels."

Pieterse continued: "To date Santam have shown total disregard for the decisions of eight High Court Judges who have so far ruled against them and other short-term Insurers. It will be a total disgrace and do irreparable harm to the tourist Industry and to the short-term insurance business if Santam should ignore today's ruling by the Supreme Court of Appeal and continue with their application seeking leave to appeal."

The tourism and hospitality sector sustains over 740 000 direct and 1.5 million indirect jobs, and contributes 8,6% to the South African economy. It is also the lifeblood for many micro and small enterprises creating mass employment opportunities for men, women and youth across the country. Since March 2020 when the COVID-19 outbreak occurred and subsequently the national lockdown was imposed, tourism and hospitality businesses of all sizes have suffered tremendous losses and many have been forced to close their doors, putting thousands of jobs at risk.

**Ends**