

Directors not liable to shareholders for decrease in share value

By [Janine Will](#)

10 Feb 2020

In a recent hearing before the Gauteng High Court, *Hlumisa Investment Holdings RF Ltd v Kirkinis 2019*, the minority shareholders of a holding company attempted to use provisions of the Companies Act, No. 71 of 2008 (the Act) to claim damages from the directors of the company for the reduction in value of their shares.



Image source: Getty Images

A key provision upon which they relied was Section 218(2) of the Act, which provides that:

“(a)ny person who contravenes any provision of the Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention.”

The shareholders argued that, in contravention of the Act, the directors had conducted the business of the holding company (African Bank Investment Limited) and its wholly-owned subsidiary (African Bank) in a reckless manner; that their conduct had caused significant loss to African Bank and had resulted in their shares in African Bank Investment Limited dropping by R27.84 per share (from R28.15 to 31c) within a year. Thus, the shareholders contended that the directors were personally liable for their loss, being the diminution in value of their shares in African Bank Investment Limited.

The court considered and interpreted the wording of relevant sections of the Act, including Section 218(2) as set out above, Section 77(2)(a) regarding the fiduciary duties of directors and Section 77(3)(b) regarding directors’ liability for loss arising from the business of the company having been conducted recklessly. It concluded that the Act does not alter or extinguish the common law doctrine of “reflective loss”.

In effect, our courts have determined that there is an insufficient causal link between harm suffered by a company as a result of a breach of a duty owed to it and loss suffered by its shareholders in consequence of a fall in the company’s share price. One of the principles which underpins the doctrine of reflective loss is that a company has a legal personality distinct from its shareholders and, accordingly, a loss to the company which causes a fall in its share price is not a loss to its shareholders.

Africa Bank, the company which suffered the loss, would have been the proper plaintiff to sue the directors. A similar conclusion was reached with regards to the shareholders' delictual claim against the companies' auditors.

ABOUT THE AUTHOR

Janine Will is a Senior Associate in the Commercial Department of Garlick & Bousfield Inc.

For more, visit: <https://www.bizcommunity.com>