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## **DIRECTORS TO PAY FOR LOSS OF WEALTH BY SHAREHOLDERS – AFRICAN BANK CASE**

In a ground-breaking case on whether shareholders can sue directors and auditors of companies in which they own shares for the loss in value of their wealth, due to a breach by directors of their fiduciary duties, the High Court - Pretoria granted African Bank Investment's shareholders leave to appeal the judgment.

The High Court initially ruled in favour of African Bank's directors and the bank's external auditor (Deloitte), but granted the appeal on the basis that the shareholders had an "adequate case" and that another court might conclude differently.

The shareholders claim that the former directors breached their fiduciary duties towards the company, and therefore justify their claim for damages in terms of the Companies Act 71 of 2008 (the "**Act**"). The **Act** states that "*any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention*". The shareholders argue that the former African Bank directors and Deloitte, are jointly and severally liable for the damages (i.e. loss of value in their shares), arising from decisions / actions taken, that contravened the **Act** (i.e. breach of directors' fiduciary duties). As such, the shareholders argue that the said breach led to the collapsing of the bank, which ultimately resulted in their loss / damage.

Should the shareholders succeed in their claim against the former directors and Deloitte, on the basis portrayed above, a precedent would be set, emphasizing the importance of the fiduciary duties of directors (owing to companies), in the limelight.

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