



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 27 November 2008

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.

NEDBANK LIMITED v JOSE MANUEL PESTANA

The respondent, Mr Jose Manuel Pestana, conducted a current account at the Carletonville branch of the appellant, Nedbank. A different Mr J M Pestana (*Pestana*) conducted a similar account at the same branch. On 4 February 2004, Pestana instructed the branch to transfer R480 000 from his account to the account of the respondent. The bank duly complied with this instruction and credited the respondent's account. Unbeknown to the bank official at the branch who effected the transfer, Nedbank had earlier that same day received an instruction from SARS, informing the bank that Pestana owed SARS some R340 million. Nedbank was accordingly appointed as agent for Pestana in terms of sec 99 of the Income Tax Act 58 of 1962 and was instructed to pay to SARS the amount standing to the credit of Pestana. The bank accordingly reversed the credit in the respondent's account without authority from the respondent and paid the money to SARS.

The respondent sued Nedbank in the Johannesburg High Court for payment of the amount of R 480 000, but the claim was dismissed by the court of first instance. On appeal to the full court in Johannesburg, the claim succeeded. On further appeal to the Supreme Court of Appeal, the court agreed with the full court that payment to the respondent had taken place. Furthermore, there was no evidence before the court to indicate that the payment was conditional or that there was anything improper about the instruction by Pestana to the bank to transfer the money to the account of the respondent.

The SCA accordingly dismissed the appeal and ordered Nedbank to pay the costs of the respondent, including the costs of two counsel.