



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: 19 February 2010

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*

On 19 February 2010 the Supreme Court of Appeal handed down judgment in *The Standard Bank of South Africa v The Master of the High Court and others* in terms of which it upheld an appeal against a decision of the Grahamstown High Court, which had refused to remove the second and third respondents, Basil Brian Nel and Michael Leo De Villiers as joint liquidators of Intramed (Pty) Ltd (in liquidation) and furthermore had refused to overturn the Master's decision not to reduce their remuneration as liquidators.

Intramed, it will be recalled, was a wholly-owned subsidiary of Macmed Healthcare Limited (Macmed). The commercial collapse of the Macmed group of companies was widely regarded as the biggest commercial collapse in the history of South Africa. The winding up of Macmed and its 45 subsidiaries began slightly more than a decade ago. On 31 May 2000 Nel and De Villiers were appointed as joint final liquidators of Intramed. Nel was not only appointed a joint liquidator of Macmed and of Intramed but of each of the other subsidiaries as well. He was an influential figure in the liquidation process.

The liquidations of Macmed and Intramed have significant financial importance. According to the first liquidation account Intramed has assets exceeding R170 m. According to the amended fourth liquidation account it has liabilities exceeding R230 m. Standard Bank is a judgment creditor of Intramed in the amount of R107 728 463.64. Standard Bank is also a major creditor of Macmed and a number of its other subsidiaries.

Standard Bank contended that Nel and De Villiers, instead of viewing the winding-up of Intramed as a distinct process, saw it as part of the winding-up of the entire group and improperly deferred to Macmed and its creditors. Standard Bank accused Nel and De Villiers of both using, and failing to use, established mechanisms for ensuring the proper administration of estates in liquidation. It alleged that they acted in a manner favouring Macmed and prejudicing Intramed. This, in the main, relates to the admission of a claim by Macmed in Intramed in the amount of R325m.

Standard bank also accused Nel and De Villiers of misappropriating Intramed's funds. They were accused of improperly using Intramed's monies to pay costs which a court in prior litigation, in relation to an application to review the Master's decision to reduce their fees, had ordered them to pay personally. Standard Bank alleged that Nel and De Villiers had only repaid the monies with interest, after this fact had been uncovered by Standard Bank, and after it persisted in holding them to account.

The SCA considered the voluminous case record and concluded that Standard Bank's complaints were in the main justified. It noted that in the winding-up of companies liquidators occupy a position of trust, not only towards creditors but also the companies in liquidation whose assets vests in them. Liquidators are required to act in the best interests of creditors. A liquidator should be wholly independent, should regard equally the interests of all creditors, and should carry out his or her duties without fear, favour or prejudice. The majority of the court (Navsa, Ponnann, Maya and Snyders JJA) held that the liquidators had acted in a manner falling short of this standard and that they should be removed as liquidators. The SCA rejected as too glib the reliance by Nel and De Villiers on legal advice. It noted with disapproval that they had ignored prior criticisms by this court and found that they had demonstrated 'an obstinate resistance' to being held to account.

The SCA considered that so much time had passed since the Macmed group had been placed under liquidation and that the liquidation process was nearing completion. It took into account that Nel and De Villiers played a major part in the delay by way of costly protracted and unnecessary litigation but decided nevertheless to take the extreme step of removing them as liquidators. This court said the following:

‘Liquidators must realise that they perform important functions. The Master, creditors and importantly courts rely on them. In the liquidation process they are expected to act impeccably. The profession must be under no illusion that courts, in appropriate circumstances, when called upon to do so will act to ensure the integrity of the winding-up process.’

The SCA concluded that Nel and De Villiers’ fees should be reduced by five per cent.

In a dissenting judgment Griesel AJA took the view that Standard Bank had failed to make out a sufficient case for the removal of Nel and De Villiers as liquidators of Intramed or for the reduction of the fees of liquidators. In the view of Griesel AJA the appeal should have been dismissed with costs.

In a separate concurring judgment Ponnar JA stated that he took an even dimmer view of the liquidators’ conduct but agreed that they should be removed and that their fees should be reduced by five per cent.

Because Standard Bank’s papers filed of record were held to be unnecessary prolix and burdensome Nel and De Villiers were ordered to pay only two thirds of Standard Bank’s costs, including the costs attendant upon the employment of two counsel.