



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
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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.

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**SONWABISO MAXWELL NDIMENI v MEEG BANK LIMITED (BANK OF
TRANSKEI)**

Mr Sonwabiso Ndimeni was dismissed from his position as manager of the Lusikisiki branch of Meeg Bank consequent upon the findings of a disciplinary enquiry that he had acted irregularly and contrary to the standing bank procedures and practice in the execution of his duties as branch manager. In respect of one of four misconduct charges against him it had been alleged that he had caused substantial financial loss to the bank, particularly in relation to the handling of the account of a certain client of the bank.

The Labour Court upheld the findings of the chairman of the disciplinary enquiry and imposed a sanction of summary dismissal. However, before judgment was

delivered, Mr Ndimeni discovered that the acting judge, an attorney, had some commercial relationship with the bank; the firm in which he was a partner was on the bank's list of attorneys to whom the bank gave instructions to prepare and execute mortgage bonds. Mr Ndimeni then sought leave to introduce this evidence on appeal to the Labour Appeal Court, alleging that because of the commercial relationship between the acting judge and the bank, there was a reasonable apprehension that the judge would not be impartial in the case and that the acting judge should therefore not have presided in the matter. The Labour Appeal Court did not deal with this complaint on appeal but decided the matter on the probabilities and dismissed the appeal.

On further appeal to it the Supreme Court of Appeal held, in a judgment delivered on 1 December 2010, that in the circumstances of the case the acting judge should have disclosed his relationship with the bank so that Mr Ndimeni could decide whether or not to apply for his recusal. He failed to do so. The court accordingly held that the facts of the case satisfied the 'reasonable apprehension of bias' test. It set aside the orders of the Labour Appeal Court and the Labour Court and remitted the matter to the Labour Court for trial *de novo* before another judge.