

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Anglorand Securities Ltd v Mudau & another
(125/10) [2011] ZASCA 76 (26 May 2011)***

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellant, Anglorand Securities Limited (Anglorand) and set aside an order of the Limpopo High Court (Thohoyandou).

The two principle issues before the SCA, concerned, firstly the commencement of the running of prescription with regard to the claim of the first respondent, Divhani David Mudau (Mr Mudau) against Anglorand and secondly whether the prescription period had been interrupted.

The facts of the case are briefly as follows. Mr Mudau instituted action in the high court against Anglorand and its employee the second respondent, Rudolph Rashama (Mr Rashama). In his summons, Mr Mudau alleged an oral agreement was entered into between himself and Anglorand with regard to the purchase of shares

Pursuant to that agreement, according to Mr Madau, he deposited an amount of R160 000-00 for the purchase of those shares into a banking account details whereof had been furnished to him by Mr Rashama. It subsequently transpired that, that amount had been misappropriated by Mr Rashama.

When he learnt of the misappropriation, Mr Madau then issued summons against Anglorand. Anglorand raised a special plea that Mr Madau's claim had prescribed before the issue of summons. The high court in effect dismissed the special plea with costs.

The SCA in hearing the appeal by Anglorand had to decide whether that conclusion was sustainable.

The SCA held that the claim had indeed prescribed before the issue of summons by Mr Madau. It then had to consider whether the running of prescription had been interrupted as contended by Mr Madau.

The SCA relied on s 14(1) of the Prescription Act 68 of 1969 which states that the running of prescription may be interrupted by an express or tacit acknowledgment of liability by the debtor. The SCA held that what was required was an 'acknowledgment of liability' and not merely an 'acknowledgment of indebtedness'. That according to the SCA had not been established in this case. The appeal accordingly succeeded and the order of the high court was replaced with the upholding of the special plea of prescription and dismissing Mr Madau's claim with costs.

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