



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: 28 March 2014
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.

**COMWEZI SECURITY SERVICES (PTY) LTD & ANOTHER
V
CAPE EMPOWERMENT TRUST LTD**

The parties in this appeal concluded a settlement agreement in a dispute about the repayment of a loan. In terms of the agreement the respondent had the right to conduct a due diligence investigation into the affairs of the first appellant. The agreement obliged the appellants to co-operate with and to assist the respondent in the investigation. The respondent had to complete the investigation within three months but had the authority to extend that time period.

When the appellants failed to comply with their obligation to co-operate in the investigation, the Western Cape High Court granted an order compelling them to do so. In subsequent proceedings for the enforcement of that order the appellants contended that the agreement had lapsed. The reason advanced was that the

respondent had failed to extend the time period in which it was obliged to complete the investigation.

The Supreme Court of Appeal found that the failure of the appellants to co-operate in the investigation was a repudiation of their contractual obligations. It held that the principle that a party to a contract may not repudiate its obligations and at the same time seek the advantage of a stipulation in the very same contract, and that a contractant is not expected to perform a futile act, found application on the facts of the matter. The high court was accordingly correct that the agreement had not lapsed and that the appellants must comply with their contractual obligations. The appeal was dismissed.