



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: May 2014
Status: Immediate

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ROYAL SECHABA HOLDINGS (PTY) LTD v GRANT WILLIAM CLOOTE & DANIEL ELARDUS ENGELBRECHT

The Supreme Court of Appeal (SCA) today, upheld an appeal against the order of the North Gauteng High Court, Pretoria, who upheld a special plea of *Res Judicata* and dismissed the Appellant's claim.

The underlying dispute between the parties relates to whether the plea of *res judicata* was rightly upheld by the high court. The factual background which gives rise to this matter is as follows:

Coote and Engelbrecht, the respondents, were employees and director of Royal Sechaba. In August 2006, Royal Sechaba and a certain Mr Jones, entered into a written employment contract in terms of which Jones was appointed by Royal Sechaba as Director of Business Development. The parties concluded a further agreement which was styled 'Addendum to Employment Agreement' (the Addendum) which was effective from March 2007, in terms of which Jones would be paid commission by Royal Sechaba on every contract he procured for the benefit of Royal Sechaba. In addition, Jones would be paid an incentive commission for managing and overseeing the performance of the contract concerned. In concluding this agreement, Royal Sechaba was represented by Coote, and Jones acted personally.

In September 2009, Coote and Engelbrecht were dismissed by Royal Sechaba, for among other things, authorising payments to Jones to which he was not entitled. During the course of the investigation, Jones as well as Coote and Engelbrecht, disputed that Jones had been overpaid. According to them the phrase 'net profit' as used in the Addendum meant 'net contract contribution' which differs from net profit in the ordinary accounting sense. They also alleged that all the commission and incentives received by Jones had been due to him.

The disputes between Royal Sechaba and Jones eventually culminated in the cancellation of Jones' employment contract and the Addendum. These disputes were subsequently referred to arbitration. The arbitrator was called upon to determine various disputes between the parties, including the interpretation of the Addendum, whether the Addendum was varied by way of a further oral agreement and whether Jones had been overpaid commission and incentive payments.

The arbitrator found against Jones in all material respect. Jones appealed the arbitrator's decision with an arbitration appeal tribunal. The tribunal upheld the appeal. Royal Sechaba then sought to reclaim a portion of the monies they had paid to Jones from Cloote and Engelbrecht, who in return plead the special defence of *res judicata*. This special plea was upheld by the court below who found that the issues sought to be determined in an action against Cloote and Engelbrecht had already been finally decided by the tribunal. (Issue Estoppel/ *res judicata*)

On appeal in this court, Royal Sechaba contended that the plea of issue estoppel had been wrongly upheld by the high court on two main grounds. First, it argued that the 'same person' requirement had not been met in that the respondents were not parties in the Jones arbitration. In reply, the respondents alleged that they were privies of Jones. Secondly, it contended that the 'same cause' requirement had not been satisfied as the issues which will arise in Royal Sechaba's claim against the respondents were not the same as those determined in the arbitration.

This court restated that the requisites of a valid defence of *res judicata* in Roman Dutch law were that the matter adjudicated upon must have been for the same cause, between the same parties and that the same thing must have been demanded. And in the circumstances of this matter, the court was inclined to agree with Royal Sechaba, that while the issues to be determined between Royal Sechaba and the respondents were largely the same as the issues determined in the arbitration, there are issues which were not adjudicated upon in the arbitration. For these reasons, the appeal was upheld.