



THE 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
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STATUS Immediate

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

Nedbank Ltd v Steyn
(25 March 2015)

MEDIA STATEMENT

Today the Supreme Court of Appeal upheld 6 appeals in these matters against a judgment of the Gauteng Division of the High Court. The 6 appeals arose from applications for default judgment before Mabuse J, which he refused. They were similar in the following respects:

- (a) In all of them the appellant, a commercial bank, was the plaintiff.
- (b) At least one of the defendants in every one of them was the executor/executrix in a deceased estate.
- (c) The appellant's cause of action in every case relied on a loan to the deceased, secured by a mortgage bond.
- (d) Apart from an order for payment of the amount owing under the loan agreement, the appellant in each case sought an order declaring the properties mortgaged executable and also applied for the issue of writs of execution in respect of these properties.
- (e) The applications were predicated on the failure by the defendants to defend the actions instituted by the banks.

In broad outline the reasons given by the court a quo for refusing to grant the default judgments sought, was that the plaintiff banks, including the appellant, had instituted action against the executors/executrices in the deceased estates under common law, instead of adopting the claims procedure provided for in the Administration of Estates Act 66 of 1965 (the Act). This decision was in direct conflict with the conclusion arrived at in an earlier decision in the same division, *Nedbank Ltd v Samsodien NO 2012 (5) SA 642 (GSJ)*, which Mabuse J pertinently held to have been wrongly

decided. Succinctly stated the issue arising in the appeals was therefore whether the provisions of the Act preclude a creditor from its common law right to institute action against the deceased estate for payment in terms of a loan agreement. In *Samsodien* it was held that they do not, while Mabuse J decided that they do.

In the end the SCA agreed with the decision in *Samsodien*. In consequence the appeal was upheld with no order as to costs.