



**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: 15 June 2017
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.

NMB Bank Limited

v

David Capsopoulos & another

The appellant, a bank operating in Zimbabwe, instituted action against the respondents arising out of the events which occurred in 2005-2007 at a time when the respondents conducted business in Zimbabwe. The respondents had purported to buy US dollars from a third party and, in doing so, had made payment in Zim dollars to the respondent which, in due course, paid US dollars to a Swiss bank account for the benefit of the respondents. These payments were made as a result of the fraud committed upon the appellant bank which involved the falsification of numerous documents, including one

that reflected that the holder of the Swiss bank account had made a loan to the Zimbabwe Reserve Bank which was being repaid in instalments.

Once the fraud had been discovered, the appellant sued the respondents in the High Court, Durban claiming the payment of the sum in excess of \$6 million that had paid out in this way. Its claim was dismissed. The matter then came before the Supreme Court of Appeal.

In upholding the appeal, the Supreme Court of Appeal found that the respondents must have been acutely aware of the restrictions relating to the use of foreign currency that had been imposed by Zimbabwe Central Bank. As evidenced by the respondents having issued instructions to Switzerland in the form of a code in which payments were referred to as 'shipments' and US dollars as 'roses' or 'flowers', it held that the respondents must have known that the payment of the US dollars they alleged they had 'bought' from third parties had been unlawful; and that, even if they had not known the precise details of the actions taken within the walls of the bank to procure the payments, they must have known that the US dollars were being paid by the appellant to Switzerland solely as a result of improper procedures. The funds were therefore being transferred as part of a fraudulent scheme designed to mislead and to which the respondents were complicit.

In these circumstances the court upheld the appeal and ordered that the respondents pay the appellant a sum in excess of \$6 million or the rand equivalent, with interest and costs.