



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  
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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.*

**JUGWANTH v MOBILE TELEPHONE NETWORKS (PTY) LTD**  
**(Case no 529/2020) [2021] ZASCA 114**

Today the Supreme Court of Appeal upheld an appeal from the Gauteng Division of the High Court, Johannesburg (per Ngalwana AJ). The appellant (Mr Jugwanth) claimed fees arising from a contract where he represented the respondent (MTN) in matters involving the Commission for Mediation and Arbitration. The last invoice was rendered in 2008 and action only instituted in 2015. MTN excepted to the particulars of claim as disclosing no cause of action because it was said that the debt had become due in 2008 and action was instituted more than three years thereafter. The contention of MTN was that it had invoked the defence of prescription and that Mr Jugwanth was therefore obliged to amend the particulars of claim to pre-emptively plead a basis to negative a defence of prescription. The high court upheld the exception and set aside the particulars of claim.

The Supreme Court of Appeal set out aspects of prescription arising from the Prescription Act 68 of 1969. A court could not take note of prescription of its own accord. A party had to invoke prescription. The party invoking it attracted an onus to plead and prove it. This included pleading and proving that various provisions in the

Act 68 bearing on the defence of prescription. These might include when prescription commenced to run involving when Mr Jugwanth became aware of the claim and the identity of the debtor, questions concerning the interruption of prescription, the completion of prescription or any agreement not to invoke prescription. MTN correctly conceded that, if it had not entered an appearance to defend the matter, a court could have granted default judgment based on the particulars of claim. They were thus sufficient to found a cause of action and not excipiable prior to the delivery of the exception. The contention of MTN was that it had invoked prescription by way of the exception. It submitted that this then required Mr Jugwanth to amend his particulars of claim to raise a basis to show that the claim had not prescribed. Because he had not done so, the particulars were excipiable.

The Supreme Court of Appeal held that the delivery of an exception raising prescription did not change the character of the particulars of claim. It could not make previously sufficient particulars defective. Only those facts alleged in the particulars of claim and any other facts agreed to by the parties can be taken into account on exception. The delivery of an exception does not attract any onus. For that, in the present matter, the defence of prescription would need to have been raised in a special plea. The particulars of claim did not need to be amended to plead a basis to negative a potential defence of prescription. The judgment of the high court was set aside and substituted with one dismissing the exception with costs.