



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA MEDIA SUMMARY

**FROM:** The Registrar, Supreme Court of Appeal  
**DATE:** 15 July 2022  
**STATUS:** Immediate

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

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*Imbuko Wines (Pty) Ltd v Reference Audio CC (405/2021) [2022] ZASCA 110 (15 July 2022)*

Today, the Supreme Court of Appeal, per Makgoka JA (Dambuza, Nicholls and Carelse JJA and Musi AJA concurring), handed down a judgment upholding an appeal by the appellant, Imbuko Wines (Pty) Ltd (Imbuko) against the order of the Gauteng Division of the High Court, Johannesburg, which, by majority, had upheld an appeal by the respondent, Reference Audio CC (Reference Audio) against a judgment of a single Judge of that division.

The dispute between the parties concerned an alleged cession between Imbuko (as a cessionary) and a third party, Dipole CC (Dipole) (as a cedent). Dipole and Reference Audio, had an oral agreement in terms of which Dipole supplied certain audio equipment (the goods) to Reference Audio.

Imbuko alleged that during December 2012, Dipole had ceded to it (Imbuko), its right to claim payment from Reference Audio for goods supplied. A director of Imbuko testified that the sole member of Dipole ceded the latter's right to claim payment from Reference Audio because Dipole was experiencing difficulties in invoicing Reference Audio, and as a result, Reference Audio did not make payment to Dipole. From January 2013 to April 2013 Imbuko rendered invoices to Reference Audio. Reference Audio paid some of them. But it denied the cession. Its stance was that the payments made to Imbuko were for goods purchased directly from Imbuko, and not because of a cession. It also asserted that one of the payments was made in error. Furthermore, Reference Audio claimed that it had settled its accounts with Dipole, save for about R38 000.

In terms of the pre-trial agreement, Imbuko bore the onus to prove the cession and Reference Audio, the onus to prove the payments it allegedly made to Dipole. As to whether Imbuko had established a valid cession, the Court had regard to the totality of the evidence. It considered the fact that the parties conducted themselves consistently with the terms of the cession as asserted by Imbuko. In particular, the Court considered the fact that Reference Audio received invoices from Imbuko for the relevant period (January – April 2013) without any objection, and paid some of them. It rejected Reference Audio's assertion that one of the payments was made in error. Accordingly, the Court concluded that Imbuko had, on a balance of probabilities, established a valid cession. The Court also rejected Reference Audio's assertion that it was not aware of the cession. Given that it conducted itself consistently with the cession, its claim could not be correct. The Court also found that Reference Audio had not discharged its onus to prove payments it alleged it had made to Dipole.

Accordingly, the Court upheld the Imbuko's appeal, and set aside the order of the full court and replaced it with an order dismissing Reference Audio's appeal, thus reinstating the initial order of the court of first instance.

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