

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 17 May 2007

Status: Immediate

**OLD MUTUAL v THAMELA GUMBI**

*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*

Today, the Supreme Court of Appeal (the SCA) has delivered a judgment reversing an order of the Transkei High Court (Full Court) which set aside an order dismissing Mr Thamela Gumbi's application for reinstatement in the employ of Old Mutual. The order dismissing his application was issued by a single Judge of the same High Court.

Mr Gumbi was employed as a sales advisor by Old Mutual since February 1995 and stationed at its branch in Mthatha. In March 2004 he was charged with misconduct after he threatened his superior with assault for failing to approve his claim for travelling and subsistence allowance. He did not attend a disciplinary enquiry arranged for 31 March 2004 on the basis that he was ill. He submitted a medical certificate before the hearing which continued in his absence and at the conclusion of which he was dismissed. However, after making representations, Old Mutual reinstated him with a view to recharging him. The second enquiry was on

29 April 2004. He and his representative attended the enquiry but it became clear from the outset that his representative wanted to prevent the hearing from being held.

When the objections raised failed to have the hearing stopped, his representative asked for adjournment which they were given. But the employee failed to return and a medical certificate was produced on his behalf. Suspecting that the employee was malingering, the chairman proceeded with the hearing in his and the representative's absence. The latter had made it clear that neither him nor the employee would return. The employee was again dismissed at the conclusion of the second enquiry.

In challenging his dismissal the employee complained that he was denied a hearing before he was dismissed. The SCA held that the employee and his representative were to blame for his absence from the hearing as the medical certificate did not allege that he suffered from a serious illness which incapacitated him from attending the hearing.