



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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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.

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ABSA BROKERS (PTY) LTD v RMB FINANCIAL SERVICES & OTHERS

The Supreme Court of Appeal today dismissed an appeal against a judgment of the Pretoria High Court upholding an exception that the appellant's particulars of claim disclosed no cause of action in terms of section 2 of the Apportionment of Damages Act 34 of 1956.

The appellant, having settled a claim in an initial action, instituted action against the respondents, alleging that they were joint wrongdoers, and sought to recover a contribution from one or more of the respondents. The essence of the respondents' exception was that the appellant had not alleged that it had given them as respondents' notice of the initial action as required by section 2(2) of the Act, nor had it obtained leave of the court in terms of section 2(4) before the proceedings against them were instituted. The respondents thus argued that the appellant was precluded from instituting the action. The appellant contended that it was not obliged to give notice of the earlier action, nor obtain leave of the court and in this regard relied on *Becker v Kellerman* 1971 (2) SA 172 (T).

The Supreme Court of Appeal held that the finding in *Becker v Kellerman* that the provisions of subsection 4 applied only to a person who had been alleged in the original proceedings to be a joint wrongdoer, was inconsistent with the scheme of the Act and undermined the object and purpose thereof. The court accordingly held that in the absence of notification to the respondents of the earlier action as required by subsection 2, and without the leave of the court, the appellant was precluded by subsection 4(b) from instituting the present action.