



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: 27 March 2013
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.

CHARLES ROBERT MACLEOD V BABALWA KWEYIYA

In 1996, a practising attorney in Cape Town settled a claim on behalf of a minor (plaintiff) who was approximately 13 years old. She was at all times represented by her mother who acted as her guardian. In April 2006, she fortuitously received details of the settlement from the attorney when she consulted him about a dispute with her mother. When she was 25 years old, almost 12 years after the claim had been settled; she caused a summons to be issued against the attorney alleging that the attorney acted negligently, in breach of contract and duty of care. The attorney raised a special plea of prescription contending that she knew or could have reasonably known the identity of the debtor and the facts on which her debt arose as early as 1997, when the claim was settled. The Western Cape High Court dismissed the special plea. On appeal the Supreme Court Appeal (SCA), reasoned that it was not unreasonable that the plaintiff trusted her mother and the attorney and thought they had acted in her best interests. There is no conceivable reason why that belief would change merely because she had attained majority. The

question is not whether she could or could not have obtained information from her mother or the attorney but rather whether she was negligent or innocent in failing to do so. The SCA concluded that she was not negligent and that there was no basis to conclude that she should have appreciated earlier that she had a claim against the appellant. Prescription only began to run in April 2006 and the appeal was dismissed.