

**In the Supreme Court of Appeal of South Africa****MEDIA SUMMARY –****E C CHENIA & SONS CC****APPELLANT****and****LAMé & VAN BLERK****RESPONDENT**

From: The Registrar, Supreme Court of Appeal

Date: 2006-03-17

Status: Immediate

(1) The respondent (the plaintiff) is a partnership of civil and structural engineers. It instituted action against the appellant (the defendant) in the Vereeniging Magistrate's Court for payment of professional fees in the amount of R22 582,80. The defendant's defence was a denial that it had entered into any contract with the plaintiff. The magistrate held that the contract between the parties relied upon by the plaintiff had been established. In consequence it gave judgment for the plaintiff for the amount claimed. The appeal against that judgment to the Johannesburg High Court was unsuccessful. Today the further appeal to the Supreme Court of Appeal was likewise dismissed with costs.

(2) The appellant's case on appeal relied on the rather technical premise that the contract between the parties, which had been established by the plaintiff's evidence at the trial, was not fully covered by the plaintiff's pleadings. The Supreme Court of Appeal held, however, that a departure from pleadings can only be held against the party responsible if it caused prejudice to the other side. In this case, so the court found, the defendant could not show that it had suffered any prejudice through the plaintiff's amplification of the allegations in its pleadings through evidence and that, consequently, the matter had been correctly decided in favour of the plaintiff in the two courts below.