



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: 28 March 2011

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.*

*NEDBANK v THE NATIONAL CREDIT REGULATOR*

The Supreme Court of Appeal today dismissed several appeals dealing with the interpretation of the National Credit Act 34 of 2005 and confirmed the judgment and declaratory orders of Du Plessis J in the Pretoria high court. Three matters were decided. First, the Supreme Court of Appeal held that a notice in terms of s 129(1)(a) prevented a consumer from applying for a debt review in respect of that specific credit agreement because by giving such notice the credit provider 'has proceeded to take the steps contemplated in section 129 to enforce that agreement' 86(2)). Secondly, the

Supreme Court of Appeal held that a debt counsellor must make an application in terms of the Rules of the Magistrates' Court when he issues a proposal in terms of s 86(7)(c) to the Magistrate's Court in respect of a consumer who is over-indebted. Thirdly, the Supreme Court of Appeal held that s 103(5) abolished the common law rule, known as the in duplum rule, in terms of which arrear and unpaid interest runs until it reached an amount equal to the outstanding capital sum. The subsection also did away with the rule that the in duplum rule is suspended pending litigation between the parties. Section 103(5) now governs the position which means that all the charges (and not only interest) 'that accrue during the time that a consumer is in default under the credit agreement may not exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.'

**Conclusion and Recommendation:  
Seek advice the moment you cannot make a full  
payment!**

**Debt re-arrangement can only be done on  
accounts for which there is no Section 129  
demand letter!**