



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF  
APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 24 May 2023

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

**The South African Medical Association Trade Union v The South African Medical Association NPC and Another (Case no 490/2022) [2023] ZASCA 71 (24 May 2023)**

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Today the Supreme Court of Appeal dismissed an appeal from a judgment of Davis J in the Gauteng Division of the High Court, Pretoria (the high court). The appeal arose from an application to finally wind up the South African Medical Association NPC, a non-profit company registered under the company laws of South Africa (SAMA). Its members are health professionals from both the private sector and public sector, the latter members being State employees (the public sector employees). After the inception of the Labour Relations Act 66 of 1995 (LRA), SAMA decided to register a trade union called the South African Medical Association Trade Union (SAMATU). This was to provide representation in various statutory bodies under the LRA for the public sector employees. Despite registering SAMATU, SAMA operated it as one of its divisions rather than to allow it to operate independently. SAMATU was placed under administration and Mr Gerhard Vosloo was appointed administrator (the administrator). His remit was to make SAMATU fully functional. In pursuit of that object, he requested information from SAMA concerning SAMATU, including details of the public sector employees. This was not forthcoming.

The administrator established that deductions were being made from the salaries of the public sector employees by way of the payroll system for government employees known as PERSAL. Those deductions were deposited into the bank account of SAMA but could lawfully only be paid to trade unions. The administrator demanded payment of all such deductions over a 20

year period but, again, SAMA demurred. This resulted in an application to the Labour Court which declared that deductions via PERSAL were for the account of SAMATU and directed SAMA to provide certain information and documents relating to the affairs of SAMATU. This prompted applications for leave to appeal which were finally turned down.

In the interim, the administrator applied for the final liquidation of SAMA on two bases. First, that SAMA was unable to pay its debts and second that it was just and equitable to do so. The high court, per Davis J, dismissed the application on the basis that no case had been made out on either leg. In the meantime, SAMATU was taken out of administration and prosecuted the appeal on its own since the administrator had been discharged.

The Supreme Court of Appeal rejected the contention of SAMATU that it had established an undisputed indebtedness to it on the part of SAMA. SAMATU failed to take into account the admitted fact that SAMA had, in conducting the affairs of SAMATU as one of its divisions, incurred costs in doing so. It had instructed forensic accountants to bring into account the income and expenditure in running SAMATU and the accountants had opined that the expenses had exceeded the income. The Supreme Court of Appeal concluded that the indebtedness of SAMA to SAMATU was disputed on bona fide grounds. SAMATU had also failed to even allege that SAMA was unable to satisfy any indebtedness. Accordingly, the appeal based on inability to pay its debts had to fail. As to whether it was just and equitable to wind up SAMA, the Supreme Court of Appeal had regard to a number of factors and concluded that the high court was correct in holding that no such case was made out. As a result, the appeal was dismissed with costs, including those consequent on the employment of two counsel.

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