



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
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Macingwane v Masekwameng and Others (Case no 626/2021) [2022] ZASCA 174 (7 December 2022)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether the head office meeting at which the members of National African Federated Chamber of Commerce and Industry (NAFCOC) voted in support of a motion of no confidence in the appellant, was lawfully convened. The determination of this issue required the interpretation of the NAFCOC Constitution, in particular clause 28.4.4, which regulates the convening of meetings and clause 23.3, which provides for the removal of the President from office.

On 19 June 2019, Mr Sekwamo Gilbert Mosena, the Deputy President of NAFCOC, issued a notice calling for a meeting of the Council to be convened on 27 June 2019 for the purpose of tabling and debating a motion of no confidence in the appellant, Mr Sabelo Vusumzi Macingwane, as the President of NAFCOC. The appellant lodged an urgent application in the high court against NAFCOC and certain other respondents to interdict them from holding the meeting. The parties to the urgent application agreed to settle, which agreement was made an order of court (the order). The order provided that the meeting scheduled for 31 July 2019 was cancelled and that the meeting scheduled for 31 July shall take place as scheduled.

On 31 July 2019, NAFCOC, at a meeting of its Council held at its head office at 13 Summer Street, Rivonia, Johannesburg (the head office meeting), passed a resolution in terms of which it adopted a motion of no confidence in the appellant as its President. NAFCOC, acting pursuant to this resolution, dismissed the appellant. This meeting was convened by the first respondent, Mr Isaac Ntshireletsa Masakwameng, NAFCOC's National Chairperson of Provinces in terms of the notice dated 5 July 2019. Aggrieved by the decision to dismiss him, the appellant, on 8 August 2019 approached the high court.

The appellant contended that the meeting was unlawful and that the resolution taken thereat, was invalid. This contention was based on two grounds. In the first instance he alleged that the first respondent, in his capacity as a National Chairperson of Provinces (the NCP), did not have authority to convene a special meeting of the Council for the purposes of removing the President. He maintained that such removal could only be effected at the meeting which was

scheduled to take place on 31 July 2019 as contemplated in the order and not at a special meeting. In the second instance, the appellant contended that the first respondent, in convening and presiding at the meeting concerned, acted in disobedience of the order. He stated that in terms of the order the parties undertook to act 'within the confines of [NAFCOC's] Constitution'.

The SCA found that clause 28.4.4 properly interpreted means that the President *or* any one (or more) of the nine Chairpersons of Provincial Executive Committees *or* the National Chairperson of Provinces shall have the power to call for a Council meeting in consultation with the EXCO. It found that the President does not need to be absent or unable to call a meeting for the operation of clause 28.4.4 to be triggered.

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