



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
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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.

Barnes v Mangaung Metropolitan Municipality ZASCA 77 (30 May 2022)

Today the Supreme Court of Appeal dismissed an appeal from the Free State Division of the High Court, Bloemfontein (per Mathebula J, with Reinders J concurring). Mr Barnes and Mr Kgamanyane were the two shortlisted candidates for the position of the first executive head of the metropolitan police service (metro police chief) of the first respondent, the Mangaung Metropolitan Municipality (the municipality). Mr Kgamanyane was appointed. Aggrieved at this, Mr Barnes approached the high court to review and set aside that appointment. His application was dismissed with costs but he was given leave to appeal to this Court.

The sole ground relied upon on appeal was that s 64D of the South African Police Service Act 68 of 1995 (the Act) required the appointee to be a registered traffic officer in terms of the Road Traffic Act 29 of 1989. Since it was common cause that Mr Kgamanyane was not so registered, the appointment was made in circumstances where the municipality had no power to do so under the principle of legality.

The appointment was made under s 64D of the Act, which read:

'When a municipal police service is established under section 64A, the municipal council in question shall appoint a fit and proper person as first executive head of the municipal police service.'

Section 64C deals with the appointment of subsequent metro police chiefs and provides:

'Subject to section 64D, a municipal council shall appoint a member of the municipal police service as the executive head thereof.'

In order to be a member of the municipal police service, a person had to be a registered traffic officer. It was submitted that, unless this was held to be a requirement for the first metro police chief, the words 'fit and proper person' in s 64D would have no clear meaning in law and would be incapable of being applied.

The Supreme Court of Appeal undertook an interpretation of s 64D. The appointment of the first metro police chief could not draw from members of the metropolitan police force since there were no members at that stage. It was therefore distinguished from subsequent appointments. In addition, it undertook a brief investigation of other legislation concerning a requirement that a person be fit and proper. It held that this had come to have an established meaning in our law and was capable of being applied. For this reason, it concluded that the high court correctly dismissed the application with costs. It followed that the appeal also had to be dismissed with costs.