



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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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

Edgar Davids v The Minister of Defence and Military Veterans and Others and Zilta Miles v The Minister of Defence and Military Veterans and Others (854/2023) [2024] ZASCA 171 (12 December 2024)

Today, the Supreme Court of Appeal (SCA) handed down judgment, dismissing the appeals, save for an order against the Minister of Defence, with no order as to costs, against an order of the Gauteng Division of the High Court, Pretoria (the high court). The high court had dismissed the applications brought by Warrant Officer Davids and Major Miles (the appellants), to compel the Minister of Defence and Military Veterans (the Minister) to implement recommendations made by the Military Ombud in terms of s 6(8) of the Military Ombud Act 4 of 2012 (the Act).

Warrant Officer Davids lodged a complaint with the Military Ombud in March 2018, alleging that he had been unfairly denied promotion and compensation for the period he served in a higher position. Major Miles, a registered pharmacist in the South African Military Health Service, filed her complaint in June 2019. She argued that she was incorrectly classified as a normal dispensing pharmacist, instead of a supervisory pharmacist, which carried higher remuneration. The Ombud upheld both complaints, recommending that Warrant Officer Davids be compensated for the relevant period and for Major Miles, the occupational specific dispensation (OSD) in respect of pharmacists be implemented and adjust her salary dating back to April 2010, as the appropriate relief in terms of s 6(8) of the Act (the complaint recommendations). Section 6(8) of the Act requires that if the Ombud upholds the complaint, the Ombud must recommend the appropriate relief to the Minister responsible for defence.

Despite the Ombud's findings and recommendations, the Minister did not take steps to implement the complaint recommendations. Consequently, the appellants approached the high court to compel the Minister to act. The high court dismissed their applications, finding that the Ombud's recommendations were advisory and did not oblige the Minister to act in terms of the recommendation of the Ombud, nor could the Minister be compelled to do so. The appeal is with leave of this Court.

The SCA held that the high court was correct to observe that to ‘recommend’, in its usual connotation, is to support an outcome for the consideration of another who is charged with taking the final decision. The SCA found that the term ‘recommend’ in s 6(8) must be interpreted within its statutory context, which indicates an advisory and not binding role for the Ombud’s recommendations. The SCA further held that the Act distinguishes between decisions of the Ombud that are final (such as dismissing a complaint) and recommendations made after upholding a complaint. When the Ombud upholds a complaint, that decision is final, but the appropriate relief for implementation is a decision that the Minister must make. Once the Ombud has recommended appropriate relief to the Minister, the Minister was not required to follow the Ombud’s recommendation, but was required to decide upon the appropriate relief to be implemented.

The Court held that while the appeals must be dismissed in so far as they were based on the Ombud’s recommendations being binding, there was reason to grant relief to the appellants by way of an order requiring the Minister, within 60 days, to render a decision as to the appropriate relief to be implemented in respect of the complaints that the Ombud had upheld. The Court held that, regarding costs, the appeals raised an important issue concerning the powers of the Ombud, which was of broad public significance. As a result, no costs were awarded for the appeal. The SCA dismissed the appeals, save for the order made against the Minister.

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