



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

From: The Registrar, Supreme Court of Appeal

Date: 19 March 2021

Status: Immediate

**South African Navy and Another v Tebeila Institute of Leadership, Education, Governance and Training (252/2019) [2021] ZASCA 23 (19 March 2021)**

*Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

Today, the Supreme Court of Appeal (SCA) handed down judgment in an appeal against the order of the Limpopo Division of the High Court, Polokwane, which declared the policy of the South African Navy (the Navy) to be invalid. The policy stipulated age requirements for admission to its recruitment programme. The high court held that the policy constituted unfair discrimination on the grounds of age, contrary to s 9 of the Constitution. The SCA upheld the appeal.

The Navy implemented the military skills development system (MSDS) to recruit persons for enlistment in the defence force to undergo training. Thereafter, recruits are deployed for two years to determine whether they are suitable for continued service, in the regular force or in the reserves. Under the MSDS, applicants who would serve in a combat role are required to be between 18 and 22 years of age, having completed Grade 12, with mathematics and physical sciences, with at least level 3 in both subjects. Graduate applicants are required to be between 18 and 26 years of age, having completed Grade 12 and holding a degree, national diploma or a trade test certificate in mechanical, marine or electrical engineering (the age requirements).

The Tebeila Institute (Tebeila) challenged the age requirements on the basis that young people aged 27 to 35 were excluded from consideration for recruitment to the military. This was contended to constitute unfair discrimination, contrary to s 9 of the Constitution. Tebeila also complained that the age requirements fail to accord to post-matric students the right to further education as required by s 29(1)(b) of the Constitution and that the Navy failed to respect, promote and fulfil the rights in the Bill of Rights in terms of s7(2) of the Constitution.

The court held that although the age requirements constitute discrimination on a specified ground, the Navy had discharged its burden of showing that the discrimination was not unfair. The age requirements are predicated upon a rational judgment as to the age group in which the attributes valued by the defence force are most likely to be found. Nor was there any showing by Tebeila that those young people excluded from consideration by the age requirements are an especially vulnerable class that has suffered from patterns of historical disadvantage. The s 9 challenge accordingly failed. Nor had Tebeila made out a case under s 29(1)(b) of the Constitution. The court held that even on the assumption that military training constitutes further education within the remit of s 29(1)(b), a complainant must set out what the State has done and failed to do to make further education available and accessible. Tebeila had failed to show what opportunities for further education the State had provided to young people excluded from recruitment to the defence force by the age requirements.

Absent some such showing, it is impossible to say in what way, if any, exclusion from recruitment to the defence force is a derogation by the State of its duty to make further education progressively available and accessible.

Tebeila conceded that if its challenges under s 9 and s 29(1)(b) failed, it sought to make no independent case under s 7(2) of the Constitution. In the result, the appeal was upheld, the order of the high court was set aside and replaced with an order dismissing Tebeila's application.