



## 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** 7 April 2021

**STATUS** Immediate

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

*Helen Suzman Foundation v Robert McBride and Others (1065/2019) [2021] ZASCA*

36

*(7 April 2021)*

### **MEDIA STATEMENT**

The Supreme Court of Appeal (SCA) today dismissed the appeal of the Helen Suzman Foundation (the HSF) against Mr Robert McBride, the Minister of Police and the Portfolio Committee on Police in the National Assembly (the PCP).

Mr McBride had been appointed as executive director of the Independent Police Investigative Directorate (IPID) for a term of five years. In terms of s 6(3)(b) of the Independent Police Investigative Directorate Act 1 of 2011 (the IPID Act), at the end of this five-year period, he could be re-appointed for a second term of five years. The Act did not expressly state who had the power to re-appoint.

The Minister of Police initially assumed that he had this power and purported to make a decision not to renew Mr McBride's tenure. Mr McBride took the view that the Minister did not have this power but that the PCP was the body that had to decide on his re-appointment. The Minister then agreed that the decision lay with the PCP but asserted that his decision was in the nature of a recommendation. Nonetheless, Mr McBride demanded that the Minister withdraw his decision. When he did not do so, Mr McBride launched an urgent application to review and set aside that decision and for an order directing the PCP to take the decision before the expiry of his term of office. The HSF applied successfully to be admitted as an *amicus curiae*.

Mr McBride, the Minister and the PCP then settled their dispute and sought to have their settlement made an order of court. The HSF objected and argued that such an order would be contrary to the law and the Constitution. The court below made the settlement an order nonetheless and the HSF applied for leave to appeal, which was refused by the court below but granted by this court on petition.

The order that the HSF objected to had declared that the Minister's initial decision not to renew Mr McBride's tenure was 'a preliminary decision' that had to be confirmed or rejected

by the PCP and it recorded that the PCP intended to take the decision before the end of Mr McBride's term of office.

The HSF argued on appeal that the order that the PCP would take the decision was irregular because of the absence of guidelines as to how the PCP would exercise its discretion; that the Minister's 'preliminary decision' was a jurisdictional precondition for the exercise of power by the PCP that conflicted with the independence accorded to IPID by the Constitution and the IPID Act; and that, in any event, the PCP had no power to re-appoint Mr McBride because the only constitutionally compatible interpretation of s 6(3)(b) of the IPID Act was that he had an unfettered option to renew his own term of office.

The SCA held that the challenge based on the absence of guidelines was not properly before it. The issue had never been raised before it was argued with the result that the Minister and the PCP had no opportunity to deal with it. It was a factual issue and the facts had not been canvassed. In any event, the regularity of the PCP's decision was not before the court. The challenge to the Minister's 'preliminary decision' also failed because, the SCA held, the Minister was free to give his view to the PCP, which was required to consider it together with any other relevant material. It was not, however, a jurisdictional precondition for the exercise of the PCP's power to re-appoint, and neither did it bind the PCP.

The interpretation of s 6(3)(b) of the IPID Act propounded by the HSF was rejected. First, it was based on the assertion that the involvement of any political actor in the re-appointment process compromised the independence of IPID and that its interpretation was the only interpretation that did not compromise this independence. The SCA held that this was an incorrect view. A series of judgments of the Constitutional Court made it clear that the involvement and oversight of the legislature in the functioning of independent bodies such as IPID was not inimical to the independence of such bodies. There was thus no need to interpret s 6(3)(b) of the IPID Act in the way proposed by the HSF in order to avoid constitutional incompatibility. It was, in any event, an interpretation that was untenable and was not one that s 6(3)(b) of the IPID Act was reasonably capable of meaning. The appeal was accordingly dismissed.