



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

Date: 31 March 2009

Status: Immediate

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.

MASEGO MATLHOLWA v ISAAC MAHUMA and two others

The Supreme Court of Appeal (the SCA) today held that the purported expulsion of Masego Rochester Matlholwa by the United Christian Democratic Party in August 2007, by a committee that had been established by the Party (and which called itself the 'Management Committee' of the Party), was lawful. In so doing, the SCA upheld the appeal of Mr Matlholwa against the judgment of the Mafikeng High Court.

Mr Matlholwa had been a member of the Party since 1999. In May 2005, he was deployed by the Party as one of its representatives to the North West Provincial Legislature in Mafikeng, whilst another member of the party, a Mr Tlhagale, was deployed to the National Council of Provinces in Cape Town.

Two years later, in about May 2007, Mr Tlhagale's deteriorating health led the Party to decide that Mr Matlholwa and Mr Tlhagale should switch seats, by each resigning his seat and thereafter taking up the other's position in the North West Provincial Legislature and the National Council of Provinces, respectively. Although Mr Matlholwa initially agreed to do, he failed to resign by the final deadline of 24 August 2007. On 27 August 2007, the second respondent (the so-called 'Management Committee') held a special meeting at which it purported to expel Mr Matlholwa from the Party with immediate effect

on the grounds that he had failed to comply with the Party's instructions despite having agreed to do so.

Mr Matlhowa challenged his expulsion in the Mafikeng High Court, but his application was dismissed with costs. On appeal before the SCA, it was common cause that the Management Committee which had purported to expel him was in fact the Federal Council Management Committee of the Party (the FCMC) referred to in several clauses of the Party's constitution. The decisive issue was thus whether the FCMC was empowered by the constitution to expel him in the manner in which it purported to do.

The SCA pointed out that a political party is a voluntary association founded on the basis of mutual agreement. The relationship between a political party and its members is a contractual one, the terms of the contract being contained in the party's constitution. Expulsion is the most drastic form of punishment which a voluntary association can impose on its members and the power to do so must consequently appear expressly or by necessary implication from the provisions of its constitution. A purported expulsion by a structure of the voluntary association which is not entrusted by the constitution with the power of expulsion expressly or by clear and unambiguous implication will be *ultra vires* and unlawful.

The only structures of the Party upon which the power to expel a member is expressly conferred by the constitution are the Provincial Committee and the Federal Council. The powers conferred on the FCMC in terms of the constitution are limited and go no further than determining the date and place of meetings of the Federal Council and the Federal Congress (the top governing structures of the Party) and, in specified circumstances, in convening special sittings of these two bodies. There is nothing in the constitution that confers any disciplinary powers on the FCMC, much less the power of expulsion. The constitution also does not provide for any delegation of powers to the FCMC.

In view of the above, the SCA held that it had not been shown that the FCMC was either authorised or empowered by the constitution of the Party to expel Mr Matlhowa and that its decision of 27 August 2007 in this regard had to be set aside. It therefore upheld the appeal with costs.

end