

Supreme Court of Appeal of South Africa

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

From: The Registrar, Supreme Court of Appeal

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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.

**SOUTH AFRICAN MARITIME SAFETY AUTHORITY (SAMSA)  
v FAFIE FORTUNE MCKENZIE**

The Supreme Court of Appeal today handed down judgment upholding the appeal by SAMSA against the dismissal of its special plea to the claim by Mr McKenzie, who was formerly employed by it as its internal auditor. Mr McKenzie had taken proceedings in the CCMA against SAMSA alleging that his dismissal was substantively and procedurally unfair. Those proceedings were settled but he then instituted proceedings in the High Court alleging that his dismissal was also a breach of his contract of employment on the basis that the effect of the prohibition on unfair dismissals in terms of the Labour Relations Act (LRA) is to incorporate into all contracts of employment a term that the employee may not be unfairly dismissed and accordingly that he had suffered damages arising from a breach of that term.

The court held that the provisions of the LRA dealing with unfair dismissal constitute a statutory code that not only prohibits such dismissals, but also prescribes the available remedies arising from an unfair dismissal and the procedures to be followed in pursuing a claim

based on an unfair dismissal. As the matter is comprehensively dealt with in the LRA it is unnecessary to imply a term into the contracts of employment of employees dealing with the same subject matter and overlapping with the statutory scheme and remedies. Nor is that desirable as it leads to attempts to circumvent the statutory scheme and obtain remedies for which it does not provide as in this case where the claim was for payment of salary until retirement.