



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

26 March 2010

STATUS: Immediate

MEC for Local Government, Housing and Traditional Affairs, KwaZulu-Natal v Yengwa (147/09)[2010] ZASCA 31 (26 March 2010)

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

The SCA today dismissed an appeal by the MEC for Local Government, Housing and Traditional Affairs, against the judgment of the KwaZulu-Natal High Court, dismissing his application for an order for costs against certain councillors of Umvoti Municipality, who had voted contrary to his directions on an issue involving the appointment of a Mr MS Yengwa as the Municipal Manager. According to the MEC, Yengwa did not qualify to be appointed to the post as he did not have a Bachelor's degree in Public Administration or another relevant field, as required by r 38(1) of the Regulations published in terms of the Local Government: Municipal Systems Act 32 of 2000.

The councillors concerned had considered Mr Yengwa to be 'appropriately qualified', notwithstanding his lack of academic qualifications. By the time the case was heard in the High Court, in KwaZulu-Natal, Yengwa had declared himself unavailable for the post, but the MEC pressed on with his application for the councillors to pay legal costs.

In determining the issue of costs the KwaZulu-Natal court not only dealt with the merits for the purposes of deciding which party was liable for costs, but also declared

r 38(1) to be invalid and unconstitutional, in so far as it prescribed a Bachelor's degree qualification for appointment to the post of Municipal Manager.

The SCA held that since the issue (lis) between the parties had ceased to exist (Yengwa having withdrawn) by the time of the hearing of the case, it was no longer necessary for the court to deal with the validity of the regulation.

On the issue of costs, the SCA held that the MEC was not entitled to recover legal costs from councillors, in proceedings involving the performance of their functions or duties as councillors. For this conclusion the SCA relied on the 2006 Constitutional Court case of *Swartbooi & others v Brink & others* and s 28(1)(b) of the Local Government: Municipal Structures Act 117 of 1998, which protected councillors against personal liability for such costs.

The SCA accordingly set aside the order of the KwaZulu-Natal High Court declaring r 38(1) invalid, and ordered the MEC to pay the costs of both the Umvoti Municipality and the councillors concerned (namely third to thirteenth respondents).

It bears mention that by the time the litigation commenced Mr Yengwa, who was the first respondent, had fallen out of the picture. No order of any kind was made concerning him.