

# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## PRESS RELEASE

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STATUS: Immediate

### ***MADZHADZHI V PRESIDENT OF THE RSA (160/09) [2010] ZASCA (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 Supreme Court of Appeal today dismissed an appeal by traditional leaders, who are headmen and headwomen (headmen) against a decision of the North Gauteng High Court refusing declaratory relief concerning their dispute with the Limpopo Provincial Government over their salaries. The appellants had two complaints. First, that provincial government did not have the power to stop paying some of their salaries as headmen in terms of s 5(2) of the Remuneration of Public Office Bearers Act 20 of 1998 (REPOB) even though they were also being paid salaries as public servants by virtue of their employment in the public service. Second, for those who were receiving salaries as headmen, they complained that the President and the provincial government were unfairly discriminating against them by not paying salary increments to them as chiefs and kings were receiving.

The SCA agreed with the appellants that s 5(2) of REPOB precludes the payment of two salaries to traditional leaders who are 'holder(s) of public office' – but does not prevent a traditional leader who is also a public servant from being paid as a traditional leader because a public servant is not a 'holder of public office' as envisaged in the section. The court said that the provincial government may take steps in terms of s 30 of the Public Service Act of 1994 to prevent public servants who are also traditional leaders from

performing other remunerative work outside the public service if this conflicts with their duties as public servants. But it may not take such action under s 5(2) of REPOB. So, because the provincial government used the incorrect power to stop paying the appellants its decision was unlawful. However the SCA held that because the appellants sought only a declaration of their rights, and did not seek to invalidate or set aside the decision of the provincial government to terminate their salaries, it could not grant the declaration because this would not change the consequences of the invalid decision.

Concerning the second dispute, that the appellants were unfairly discriminated against by not being granted salary increments, the SCA held that the appellants' case did not disclose any cause of action.

However, the SCA held that because the provincial government had acted unlawfully by terminating the salaries of some headmen, it ordered that each party pay its own costs, even though the appellants had failed to obtain the relief they had sought.