



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: 22 September 2010

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

On 22 September 2010 the Supreme Court of Appeal handed down judgment in *Member of the Executive Council for Social Development v Eunice Mdotisa* dismissing an appeal by the Member of the Executive Council, Department of Social Development of the Eastern Cape (the MEC), against a decision of the Mthatha High Court in terms of which he was ordered to reinstate the disability grant of Ms Eunice Mdotisa, quinquagenarian, who resides at Ncamedlana farm, Mthatha, in the Eastern Province.

It was contended on behalf of the MEC that the grant had been a temporary one which had expired by the effluxion of time. Ms Mdotisa contended that she had been brought under the impression that it was a permanent grant subject only to annual review. She had approached the Mthatha High Court because the grant had been terminated without reason and notice to her. It was clear that Ms Mdotisa had never been notified that the grant was temporary. It had in fact been paid for 29 months, a period of time way beyond the maximum duration of a temporary grant.

The answering affidavit on behalf of the MEC was garbled and non-sequential. The court described the manner in which the grant was administered as 'administrative

mayhem'. It recorded that because of this counsel for the MEC was constrained to concede that the court below was correct in declaring the sudden termination of the grant unlawful. Counsel for the MEC was questioned by the court about why the MEC persisted in the appeal. He replied that the MEC was concerned that the consequential orders, in terms of which the Mthatha High Court directed the MEC to reinstate the grant and to pay Ms Mdodisa the arrears owing to her, were such as to prohibit any lawful termination in the future based on the MEC's view that the asthma that Ms Mdodisa suffered from was not such as to cause functional impairment. This court rejected this clearly unsustainable submission and noted that the consequential orders complained of followed ineluctably from the order declaring the termination unlawful and that if there was a legally sustainable basis for terminating the grant the MEC was not precluded from doing so.

This court described the appeal as 'a tale of mal-administration and wasteful litigation'. It noted that the department for which the MEC was responsible behaved peculiarly, both in relation to the manner in which the disability grant was dealt with and in the litigation that followed. The appeal was as unnecessary and unmeritorious as the preceding litigation. Both were at huge cost to the South African taxpayer, with no prospect, as the MEC's counsel conceded, of ever recovering any of those costs from a lay litigant who was asserting her right to fair administrative action. The appeal was consequently dismissed and the MEC was ordered to pay Ms Mdodisa's costs including the costs of two counsel.