



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
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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.

Collen Mzingisi Dumani v Desmond Nair & another

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Dumani.

The appellant is Mr Collen Mzingisi Dumani (Dumani), a magistrate, currently on suspension, who was appointed as acting head of the Graaff-Reinet Magistrate's Court, with effect from 1 November 2008. The first respondent, Mr Desmond Nair (the presiding officer), is the chief magistrate of Pretoria, who presided over an inquiry into misconduct charges brought against Dumani by the second respondent, the Magistrates Commission.

On 5 March 2009, the Magistrates Commission charged Dumani with four counts of misconduct in terms of sub-regulation 26(4)(a) of the Regulations for Judicial Officers in the Lower Courts issued under the Magistrates Act 90 of 1993. All the complainants were employed in various capacities at the Graaff-Reinet Magistrates' Court where Dumani had been stationed. The first charge related to an incident that occurred during December 2008, when Dumani allegedly stroked the cheek of Ms Salome Hartney (Hartney), who was employed as an administrative clerk at the court. The second charge related to

Dumani allegedly stroking the cheek of a security officer, Ms Marilyn Slavers (Slavers), with the back of his hand. In respect of the third charge, it was alleged that Dumani had touched the back of the neck of Ms Regina Karolus (Karolus), a cleaner at the court. The complainant in the final charge was Ms Edwina Ele (Ele), a senior administrative clerk, and it was alleged that Dumani had put his hand between her breasts.

During March 2009, the Magistrates Commission appointed the presiding officer to hold a disciplinary enquiry into the misconduct charges. On 19 March 2010, and after hearing evidence, the presiding officer found Dumani guilty of three counts of misconduct and acquitted him on count two relating to the complainant Slavers. On 24 May 2010, the presiding officer recommended to the Magistrates Commission that Dumani be removed from office as a magistrate. The Magistrates Commission accepted the recommendation that he be removed from office on grounds of misconduct and forwarded its recommendation to the Minister of Justice and Constitutional Development.

[Dumani instituted proceedings in the Eastern Cape High Court (Grahamstown) to review and set aside the findings of the presiding officer. The high court (Chetty J, Pickering J concurring) dismissed the application.

On appeal, the grounds of review relied upon were that: (a) the presiding officer committed a material misdirection of fact; (b) the presiding officer acted arbitrarily; and (c) the presiding officer's decision is so unreasonable that no reasonable person could have reached it.

The court held that even if there was a misdirection by the presiding officer in regard to the evidence of Claassen, one of the witnesses, the convictions would not be reviewable on the ground of material error of fact, nor under the guise of the provisions of s 6(2)(e)(iii) of PAJA viz 'because irrelevant considerations were taken into account or relevant considerations were not considered'.

The court found that there was no evidence to support the suggestion that the complainants had concocted these charges against him as they were dissatisfied because a black man had been appointed as head of office over Afrikaans-speaking people and he

could not speak Afrikaans. The court was not persuaded that the review grounds relied upon have been established. The court found that a reasonable person in the position of the presiding officer on the evidence disclosed in the record and applying the correct test in law could have reached the conclusion that Dumani was guilty of the three counts of misconduct of which he was convicted. For these reasons, the appeal was dismissed.