



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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GENERAL COUNCIL OF THE BAR V URMILLA ROSHNEE DEVI MANSINGH

The Supreme Court of Appeal (SCA) today held, unanimously, that s 84(2)(k) of the Constitution authorises the President of the Republic to confer the status of senior counsel on practising advocates. In consequence, the court set aside an order of the North Gauteng High Court declaring the contrary.

The case arose in the North Gauteng High Court, where Ms Mansingh, a practising advocate and member of the Johannesburg Society of Advocates, brought an application for a declaratory that s 84(2)(k) of the Constitution does not include the prerogative power to confer the status of senior counsel (or ‘silk’, as it is commonly known) on practising advocates. Ms Mansingh’s case was based the ground that the Constitution is intended to sever relations with the past, and as such the past practice of conferral of silk status as a prerogative power is of diminished importance and the court should look to indications, in broader context, which compel a meaning of honours which deviates from the historical

background of the provision. Her contentions found favour with Patudi J, who granted the declaratory sought.

In upholding the appeal against the decision of the court a quo, the SCA found that the task of the interpretation of s84(2)(k) does include a view to the historical context of 'honours'. From this perspective it was held to be clear that the institution of senior counsel is part of our heritage as a former British colony, where it was generally accepted that the Queen would appoint silks in the exercise of her prerogative powers. Insofar as the intention of the drafters of the Constitution, the court held, was not to abolish prerogative powers or to diminish the function of the head of State previously derived from the royal prerogative, but rather to codify these and render them subject to the Constitution, s84(2)(k) must be afforded its traditional content, which included the power to appoint silks. The judgment further determines that nothing in the broader context compels a meaning of honours that deviates from the one clearly indicated in the historical background of the provision.