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	27 May 2013
STATUS	Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***GGB & another v MEC for Economic Development (620/2012*) [2013] ZASCA 67**
(27 May 2013)

The Supreme Court of Appeal (SCA) today upheld with costs on the attorney client scale an appeal against a judgment of the South Gauteng High Court, which had dismissed an application by the Gauteng Gambling Board for an order setting aside its dissolution by the predecessor of the present MEC for Economic Development, Gauteng Provincial Government.

The SCA held that the former MEC had, in her actions before the actual dissolution, been motivated by an ulterior purpose, namely, to pressurise the Board into accommodating, in a building owned by it, and recently constructed at a cost of R101 million, a commercial entity named by her. The MEC had then instructed the Board to vacate the premises and to move to a central location in which her department had offices, ostensibly because it facilitated effective administration and service delivery. The Board had resisted it on the basis that it had obligations in terms of the Public Finance Management Act 1 of 1999 and the Treasury Regulations. It had to be financially prudent and accountable. In the Board's view, following the MEC's instructions, would result in unwarranted further State expense that might render them liable to criminal prosecution. The MEC responded by dissolving the Board.

The Gambling Board then turned to the South Gauteng High Court for relief, seeking a declaration of invalidity. The Board was unsuccessful. This led to an appeal to this Court. The SCA, in upholding the appeal, said the following:

'The Board was . . . . obliged and well within its rights to be concerned about fiscal prudence and accounting responsibility in terms of the PFMA, the Regulations and the Act. Indeed, it is startling that the MEC, in issuing her instruction for the Board to accommodate African Romance and to relocate and in dealing with the Board's resistance, showed scant concern, if any, in this regard.'

The SCA held that the written and verbal communications between the Board and the MEC and her department as well as other utterances and documents, led to the ineluctable conclusion that the MEC was motivated to act in the manner complained of by an ulterior purpose, namely, to compel compliance with the prior instruction to accommodate African Romance.

Furthermore, this Court held that the MEC had in any event misconstrued the section on which she relied to dissolve the Board. It held that the MEC had acted beyond her legal powers and contrary to the principle of legality.

The SCA expressed its displeasure at the manner in which the MEC had behaved, over and above the manner in which she had terminated the membership of the Board, more particularly her conduct subsequent to the litigation being launched. The Court said the following:

'The MEC, in her responses to the opposition by the Board, appeared indignant and played the victim. She adopted this attitude whilst acting in flagrant disregard of constitutional norms. She attempted to turn turpitude into rectitude. The special costs order, namely, on the attorney and client scale, sought by the Board and Mafojane is

justified. However, it is the taxpayer who ultimately will meet those costs. It is time for courts to seriously consider holding officials who behave in the high-handed manner described above, personally liable for costs incurred. This might have a sobering effect on truant public office bearers. Regrettably, in the present case, it was not prayed for and thus not addressed.'

Persons who had been appointed as a successor board pending the appeal before the SCA were granted leave to intervene. At their instance the Court, in order to preserve the validity of decisions made by them and an administrator purportedly appointed in terms of the Gauteng Gambling Act 4 of 1995, set aside the termination prospectively rather than retrospectively.

The order of the South Gauteng High Court, dismissing the application by the Gambling Board was set aside and substituted with an order declaring the dissolution of the Board unlawful and invalid.