



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 25 September 2014
STATUS Immediate

Air Traffic and Navigation Services Company v Christiaan David Esterhuizen
(668/2013) [2014] ZASCA (25 September 2014)

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

Today the Supreme Court of Appeal (SCA) delivered a judgment upholding the appeal by the appellant, Air Traffic and Navigation Services Company and ordered the respondent, Mr CD Esterhuizen to pay the appellant the sum of R 427 843 with interest at a rate of 15.5 per cent per annum, calculated from the date of summons to the date of payment.

The issue before the SCA was the liability of the respondent to the appellant, following upon the premature termination of his employment with the appellant based on a retention scheme, which included a fixed term contract of employment. The question was essentially whether the respondent, in consequence of his resignation, was liable to repay the incentive amounts the appellant would have paid to him had he not resigned.

The material terms of the retention agreement were that the respondent would receive monthly retention payments in addition to his normal remuneration as an incentive to remain in the employ of the appellant. The respondent agreed to stay in the appellant's employ for a fixed term of four years from 1 April 2007 to 31 March 2011.

On 30 May 2008, the respondent tendered his resignation and the appellant asserted that such resignation constituted a breach of the retention agreement and called upon the respondent to remedy that breach, failing which it would cancel the agreement and claim payment of all amounts already paid under the agreement, alternatively, the outstanding balance in terms of the remainder of

the agreement. The respondent did not remedy the breach and the appellant issued summons out of the North Gauteng High Court, claiming the sum of R 427 843, being the monthly incentive amounts it would have paid to the respondent for the period July 2008 until 31 March 2011. The respondent contended that at all material times during the negotiation and conclusion of the retention agreement, it was agreed between the parties that should he resign before the expiry of the fixed term, he would only be liable for repayment of the retention payments he had actually received.

On appeal, the SCA held that when the contract is for a fixed period, none of the parties has the right to terminate the contract prior to the expiry of the fixed period. The court found that the respondent's primary obligation was to remain in the employ of the appellant for the fixed term and that his premature termination of employment was contractually impermissible and amounted to a breach of his obligations under the retention agreement.

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