

THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 26 September 2014  
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.*

***Legal-Aid South Africa v Mzoxolo Magidiwana (1055/13) [2014]***  
**ZASCA141 (26 September 2014)**

The Supreme Court of Appeal handed down judgment today in an appeal from the North Gauteng High Court, Pretoria. The respondents had sought an order in the court below to the effect that the South African State ‘take all reasonable steps to provide adequate legal and equitable aid to the applicants’ in respect of all future proceedings before the Marikana Commission of Enquiry (the Commission) appointed by the President in August 2012. The Commission is mandated to investigate matters of public, national and international concern arising out of the incidents at the Lonmin Mine in Marikana during August 2011, which lead to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested and damage and destruction to property (the Marikana incident). The respondents were all involved in the Marikana incident, either as victims or perpetrators.

Before the high court, the application failed in respect of the President and the Minister of Justice and Constitutional Development but succeeded in respect of Legal Aid South Africa (LASA). That court ordered LASA to ‘forthwith take steps to provide legal funding to the applicants for their participation in [the Commission]’ and ‘to pay the applicants’ costs’. That court then granted LASA leave to appeal to this court.

At the outset of the hearing of this appeal, counsel were required to address argument on the preliminary question of whether the appeal and any order made thereon would, within the meaning of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013, have any practical effect or result. After hearing argument on this issue the appeal was dismissed on 8 September 2014 in terms of that section and each party was ordered to pay its own costs of the appeal. The reasons for that dismissal now follow.

When the respondents had initially applied to LASA for funding, their application had been declined principally on the basis that it had previously granted funding to 23 families who had lost breadwinners during the Marikana incident, the CEO of LASA having exercised her discretion accordingly. The high court held that this decision was irrational and unconstitutional, and ordered LASA to provide legal funding to the applicants for their participation in the Commission. LASA now contends that the high court usurped the discretion of the CEO in what is essentially a complex polycentric enquiry, which potentially opens the floodgates to claims on LASA's scarce resources and leaves its decision to refuse applications for funding vulnerable to judicial scrutiny in the future. It is on this basis that the appeal was argued to be of practical effect despite the dispute being effectively moot as the parties had reached an agreement of settlement in terms of which LASA would provide the respondents with the required funding for the full duration of the unfunded period of the Commission.

In rejecting that argument, this court noted that no discrete legal issue subsists, and therefore it is precluded from exercising its discretion and entering into the merits of the matter. Because of the highly unusual nature of the Marikana incident, and the small probability of it being repeated, any future such matter would have to be decided on its own peculiar facts. Accordingly, any decision in the instant matter would be unlikely to be relevant or applicable in a future matter. The uniqueness of this matter will thus in all likelihood distinguish this case from any other that LASA, and in turn a court, is likely to be confronted with in the future. In any event, this court held, only rarely would decisions of LASA be subject to review by a court.

This court further held that as all issues had been settled by agreement between the parties there was no discretion for this court to exercise in terms of s 16(2)(a)(i), because however the appeal turns out, the position of the respondents will remain unaltered and the outcome

will be a matter of complete indifference to LASA. The appeal was accordingly dismissed with each party being ordered to pay its own costs.