



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

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The City of Johannesburg & others v The South African Local Authorities Pension Fund & others (20045/2014) [2015] ZASCA 4

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) furnished its reasons for upholding the appeal by the appellants and setting aside an order of the Gauteng Local Division, Johannesburg.

The issue before the SCA was whether the impugned decision by the employers to terminate the contributions to the South African Local Authorities Pension Fund (SALA) was validly taken. A further issue under consideration was the point *in limine*, raised by the appellants, based on the respondents' failure to join the employees who were members of SALA.

The first appellant is the City of Johannesburg and the third; fourth, fifth and sixth appellants are so-called 'utilities, agencies and corporatized entities' (UACs). These UACs were created during about 2000 as separate corporate bodies, wholly owned by the City, to render services previously performed by the City itself within its municipal area. The first respondent is the SALA which is mainly a pension fund for the employees of local authorities. The second, third and fourth respondents are trade unions who represent some of the members of SALA while the fifth, sixth and seventh respondents are individual members of that fund.

Prior to 1 January 2005 the City and the UACs (collectively referred to as the employers) were contributing employers in SALA and as such paid contributions to the fund in accordance with its rules. However, on 30 June 2004 the employers gave notice to the SALA of their intention to cease participation in the fund; to terminate their contributions on behalf of employees who were members of SALA; and instead, with effect from 1 January 2005, to pay their contributions to another pension

fund – eJoburg Retirement Fund (eJoburg) only. During May 2005 the respondents brought an application in the Gauteng Local Division of the high court, Johannesburg, to challenge that decision. The respondents' case was that the employers acted in breach of obligations resting on them in statute, contract, administrative law and labour legislation when they decided to terminate their contributions to SALA and that the decision was in consequence a nullity. The high court dismissed the employers point *in limine* and found in favour of the respondents on every ground that they raised. About eight years after the employers implemented their decision to transfer their contributions from SALA to eJoburg that decision was set aside.

The SCA held that it was a well-established principle that, in the exercise of its inherent power, a court will refrain from deciding a dispute unless and until all persons who had a direct and substantial interest in both the subject matter and the outcome of the litigation, had been joined as parties. The court found further that the relief sought could very well prejudice the interests of terminating members and former members and this consideration was indeed relevant for purposes of considering the non-joinder point.

The SCA held therefore that the employers' non-joinder objection was indeed a valid one. The court concluded that it should be apparent that the order sought and obtained by the respondents would probably have a detrimental effect on the rights and interests of at least some of the terminating members and flowing from that the terminating members had a direct and substantial interest in the relief that the respondents sought and obtained from the court a quo. In consequence the high court should have stayed the application until former members of SALA had been joined.

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