



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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SABC v DA (393/2015) [2015] ZASCA 156

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed the appeal by the South African Broadcasting Corporation SOC Ltd (SABC), the Minister of Communications (the Minister) and Mr Hlaudi Motsoeneng (the appellants) against Part A of an order granted by the Western Cape Division of the High Court, Cape Town. In the result, the court below's order was confirmed, in terms of which the SABC was directed to institute disciplinary proceedings against Mr Motsoeneng and he was suspended from his position as Chief Operations Officer (COO) of the SABC at least until the finalisation of such disciplinary proceedings.

The primary issues before the SCA were whether the court below was correct, firstly, in directing the SABC to institute disciplinary proceedings against Mr Motsoeneng; and secondly, in ordering that Mr Motsoeneng be suspended pending finalisation of such proceedings. However, in deciding these issues, the SCA considered the powers and position of the Public Protector, as a report authored by her concerning the management of the SABC formed the basis for the original application by the first respondent, the Democratic Alliance (DA).

The facts of the case are as follows. In February 2014, the Public Protector released a report detailing 'pathological corporate governance deficiencies at the SABC', and singled out Mr Motsoeneng (the Acting COO at the time) for particularly scathing criticism. Amongst other things, the Public Protector had found that: his appointment as Acting COO was irregular; his salary progression from R1,5 million to R2,4 million in one fiscal year was irregular; and he had fraudulently misrepresented to the SABC that he had a matric qualification. Consequently, the Public Protector directed the SABC and Minister to implement various remedial steps, including the institution of

disciplinary proceedings against Mr Motsoeneng. The Public Protector also required them to submit implementation plans.

On 7 July 2014, instead of implementing the Public Protector's remedial action and without notice to her, the appellants permanently appointed Mr Motsoeneng as COO. The justification for ignoring the Public Protector's remedial action was that a firm of attorneys, Mchunu Attorneys, had been appointed to investigate the veracity of the findings contained in her report, and a report prepared by them had apparently exonerated Mr Motsoeneng. Aggrieved, the DA approached the court below for an order in two parts. Part A was an urgent application for inter alia the suspension of Mr Motsoeneng and the institution of disciplinary proceedings against him. Part B was for inter alia the setting aside of his appointment. The court below granted the order in Part A, which formed the subject of the appeal. Part B remains to be finalised by the Western Cape Division of the High Court.

Regarding the first issue, the SCA confirmed the finding of the court below that the SABC must institute disciplinary proceedings against Mr Motsoeneng. In arriving at this conclusion, however, the SCA rejected the reasoning of the court below, which had concluded that the directions of the Public Protector were not 'binding and enforceable' in the same way as a court order. The SCA noted that a court order is an 'inaccurate comparator and the phrase "binding and enforceable" is terminologically inapt and in this context conduces to confusion'. The SCA considered in depth the place of the Public Protector in our constitutional framework, and concluded as follows:

'... the office of the Public Protector, like all Chapter Nine institutions, is a venerable one. Our constitutional compact demands that remedial action taken by the Public Protector should not be ignored. State institutions are obliged to heed the principles of co-operative governance as prescribed by s 41 of the Constitution. Any affected person or institution aggrieved by a finding, decision or action taken by the Public Protector might, in appropriate circumstances, challenge that by way of a review application. Absent a review application, however, such person is not entitled to simply ignore the findings, decision or remedial action taken by the Public Protector. Moreover, an individual or body affected by any finding, decision or remedial action taken by the Public Protector is not entitled to embark on a parallel investigation process to that of the Public Protector, and adopt the position that the outcome of that parallel process trumps the findings, decision or remedial action taken by the Public Protector. . . Before us, all the parties were agreed that a useful metaphor for the Public Protector was that of a watchdog. As is evident from what is set out above, this watchdog should not be muzzled.'

Regarding the second issue, the court below had concluded that in light of Mr Motsoeneng's position at the SABC and the findings made against him by the Public Protector, there was a real risk that the integrity of the disciplinary process against him might be undermined if he was not suspended. The SCA upheld this conclusion, and so also confirmed the suspension order.

Accordingly, the SCA dismissed the appeal and upheld the order of the court below and in the process clarified the powers of the Public Protector.

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