



**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** 30 June 2020

**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.***

*AfriForum NPC v Chairperson of the Council of the University of South Africa & others*  
(765/2018) [2020] ZASCA 79 (30 June 2020)

This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 18h00 on 30 June 2020.

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The Supreme Court of Appeal today upheld an appeal against a judgment of the Gauteng Division of the High Court, Pretoria, concerning the legality of decisions taken by the Senate and Council University of South Africa (UNISA) adopting a new language policy, which replaced its dual-medium language English/Afrikaans policy with an English-only language as its language of learning and tuition.

The issues on appeal were whether (a) the impugned decisions contravened s 29(2) of the Constitution; (b) the Senate did not follow its rules in the conduct of its meeting, in breach of the principle of legality; and (c) UNISA failed to consult the persons who would be most affected by the new language policy, in breach of procedural rationality.

The Supreme Court of Appeal made the following findings. UNISA did not properly comprehend the implications of the constitutional right to receive education in the official language of one's choice, the constitutional parameters within which its powers had to be exercised, and the precise

ambit of responsibility which s 29(2) imposed upon it, when it reviewed its language policy and adopted a new one. The considerations upon which it relied to prove that it was not reasonably practicable to continue with dual medium tuition such as affordability and the cost-saving that could arise from the change, which could free funds for the development of the other official languages as languages of learning and tuition at the university, were not discussed in the meetings at which it was resolved to adopt the new language policy. UNISA further failed to prove the resource constraints it alleged and that it was not reasonably practicable from a commercial standpoint to continue to offer tuition in Afrikaans. Whilst the rationale for the new language policy, namely that the demand for Afrikaans was decreasing, was indisputable, the evidence showed that a significant number of students still wanted it but their actual numbers were not placed before the Senate and Council when these bodies decided to discontinue Afrikaans as one of UNISA's languages of learning and tuition. UNISA's position was distinguishable from the other recent language policy cases involving the Universities of Stellenbosch and the Free State in which those policies were set aside for unlawfulness to protect racial harmony and prevent racial supremacy threatened by racially segregated classes and the exclusion of non-Afrikaans speaking students from campus life by the use of Afrikaans. And those universities, unlike UNISA, had conducted thorough and proper investigations and executed their mandate in reviewing their language policies meticulously.

The SCA asked how what purpose it would serve UNISA's noble and self-admittedly progressive goal to develop all South Africa's indigenous languages, which are a precious and threatened national resource, to become academic languages, to knock down a fully developed and functional language of learning and tuition ie Afrikaans, to develop other languages to its standard when there was no sound reason to do so other than a dwindling interest in the language. The SCA held that to take away a constitutional right that is already enjoyed ie tuition of Afrikaans students in their mother tongue, in these circumstances did not satisfy the rationality test and was not justified. UNISA had failed to establish that it was not 'reasonably practicable' to continue to offer tuition in Afrikaans and the new language policy was unconstitutional and unlawful, so declared the SCA

