THE SUPREME COURT OF APPEAL
**REPUBLIC OF SOUTH AFRICA**

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

From: The Registrar, Supreme Court of Appeal

Date: Monday 31 March 2008

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*

**Murray v Minister of Defence (383/2006) [2008] ZASCA 44 (31 March 2008)**

In a judgment delivered today, the Supreme Court of Appeal has unanimously upheld an appeal by Commander George Murray against the Minister of Defence. Murray claimed that the South African Navy constructively dismissed him in 1997. The High Court in Cape Town dismissed his claim, but the SCA has reversed this judgment, and has upheld Murray's claim. The case at this stage involved the question of liability only, and in the next stage Murray will be able to prove what damages he suffered by being dismissed constructively.

'Constructive dismissal' is a form of dismissal the law recognises when the employer is at fault for making it impossible for the employee to continue in employment. If the employee then resigns, the employer is held responsible for dismissing the employee, who can claim compensation. The SCA held that Murray's employment (which was not covered by post-Constitution labour and employment statutes, which exclude military personnel)

was governed by the constitutional right to fair labour practices, and that this right as developed under the common law included protection against constructive dismissal.

Before his constructive dismissal, Murray was the head of the Simonstown military police. Members of his own unit accused him of various improprieties, which led to the navy taking protracted steps against him, including formal investigations and two court-martials. After four years, however, none of the charges stuck, and Murray demanded to be returned to his posting. The navy refused, saying that even though Murray had not been convicted, his operational ability as a commander had been tarnished by the allegations against him. Instead, the navy offered Murray a senior staff posting in Pretoria – which Murray refused.

The SCA agreed that the navy was justified in citing operational reasons for not returning Murray to his command (though the court faulted the navy for not consulting Murray before down-grading his post during his court-martials).

However, the SCA held that the navy failed in its duty of fair consultation with Murray in not properly explaining to him the post it offered to him. Murray was namely under the justified misapprehension that the post involved duties far outside his field of knowledge and ability, whereas the navy had in fact created a new post, which it considered Murray would be able to fulfil. This was never conveyed to Murray. Nor was he informed that the navy would be prepared to re-train him and assist him in other ways.

Instead, because of the strained relationship following the four-year dispute, the navy left Murray to resign. This the SCA (in a unanimous judgment by Cameron JA, in which Mpati DP, Mlambo JA, Combrinck JA and Cachalia JA agreed) held was unfair. The navy made no effort at all to explain the job to Murray, to illuminate its parameters and challenges, and to engage him in a process that would enable him to consider it properly.

The navy's decision not to return Murray to his post presented it with a classic reorganisation or rationalisation problem. Given the outcome of both court-martials, the decision not to return him to his post involved no fault on Murray's part. In these circumstances the law clearly places a duty on the employer to consult fully with the

employee affected and to share information to enable him to make informed decisions. The navy did not fulfil this responsibility until after the plaintiff resigned. That was unfair.

The decision in the Cape High Court was therefore reversed, and the claim upheld with costs in both courts.