



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

Date: 27 May 2024

Status: Immediate

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George Hlaudi Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others (64/2023)
[2024] ZASCA 80 (27 May 2024)

Today the Supreme Court of Appeal (SCA) delivered judgment dismissing an application for condonation by Mr George Hlaudi Motsoeneng, the former Chief Operating Officer of the South African Broadcasting Corporation (Soc) Ltd (SABC), with costs, including those of two counsel. Mr Motsoeneng had sought condonation and the reinstatement of his appeal that had lapsed. The SCA also ordered Mr Motsoeneng to pay the costs, including those of two counsel, incurred by the SABC in opposing the lapsed appeal. The issue before the SCA was whether the failure by Mr Motsoeneng to prosecute his appeal by timeously filing his heads of argument should be condoned and the appeal revived.

As an employee of the SABC, Mr Motsoeneng had become a member of the third respondent, the South African Broadcasting Corporation Pension Fund (the Fund). After the SABC board had come to be reconstituted, a disciplinary enquiry against Mr Motsoeneng was convened. Following the disciplinary enquiry, Mr Motsoeneng's employment was terminated on 12 June 2017, whereafter he became entitled to the payment of a withdrawal benefit from the Fund in accordance with its rules.

On 24 July 2017, the audit department of the SABC discovered that Mr Motsoeneng had been paid a success fee to which he allegedly was not entitled, following approval by the Governance and Nominations Committee (the GNC) of the SABC on the basis that Mr Motsoeneng had raised an amount of R1,19 billion for the benefit of SABC. The GNC approved (with no authority or mandate) a payment in the sum of R11 508 549.12.

On 20 July 2017, the SABC addressed a letter to the Chief Executive and Principal Officer of the Fund requesting that: (a) it withhold payment of the accumulated pension benefit due to Mr Motsoeneng, until such time as a judgment issued in the civil proceedings that it intended instituting against him; and, (b) in the event of a judgment issuing against Mr Motsoeneng, the Fund make a deduction from any benefit due to him in satisfaction of the judgment. The Fund refused to accede to the request.

On 4 August 2017, the SABC issued an urgent application out of the Gauteng Division of the High Court, Johannesburg seeking relief in two parts. Under Part A, the SABC sought an order restraining the Fund from paying out any benefit due to Mr Motsoeneng to the tune of R11 508 549.12, pending the determination of Part B. On 18 January 2018, Maier-Frawley AJ issued an interim interdict

restraining the Fund from paying out the pension fund benefit standing to the credit of Mr Motsoeneng, pending the finalisation of the matter.

Part B of the relief sought came before Khan AJ on 26 May 2021. On 15 December 2021, the learned judge issued an order declaring the success fee awarded to Mr Motsoeneng in the sum of R11 508 549.12 invalid and ordered him to repay the amount to the SABC with interest *a tempore morae*. In the event that Mr Motsoeneng fails to pay, the Fund was directed to pay the amount to the SABC from the pension proceeds that have accumulated to the benefit of Mr Motsoeneng.

On 15 July 2022, Khan AJ dismissed Mr Motsoeneng's application for leave to appeal. On 19 January 2023, two judges of this Court also dismissed Mr Motsoeneng's application for leave to appeal. Mr Motsoeneng then applied in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act) to the President of this Court for the reconsideration of the refusal of his petition. The application was referred by the President to the court.

The SCA held that the necessary prerequisite for the exercise by the President of the discretion under s 17(2)(f) is the existence of 'exceptional circumstances'. The SCA took the view that the contentions advanced on behalf of Mr Motsoeneng, had been considered and found to be wanting in the detailed judgment of Khan AJ. The two judges who considered and dismissed his application for leave to appeal, evidently agreed with Khan AJ that there were no reasonable prospects of success in the contemplated appeal. In the result, the 'exceptional circumstance' threshold set by s 17(2)(f) had not been met. Consequently, Mr Motsoeneng's application had to fail.

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