



CONSTITUTIONAL COURT OF SOUTH AFRICA

Association of Regional Magistrates of Southern Africa v President of the Republic of South Africa and Others

CCT 91/12

Date of hearing: 19 February 2013

Date of judgment: 23 May 2013

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today, the Constitutional Court delivered a judgment dismissing an application for confirmation of part of an order of the North Gauteng High Court, Pretoria (High Court) that set aside the President's decision to increase the annual remuneration of Regional Magistrates and Regional Court Presidents by 5%.

The Independent Commission for the Remuneration of Public Office Bearers (Commission) recommended a 7% annual remuneration increase for all public office-bearers for the 2010/2011 financial year. The Association of Regional Magistrates of Southern Africa (ARMSA) was given an opportunity to comment on the Commission's recommendation and raised certain concerns in relation to the proposed 7% increase. On 8 September 2010, after discussion with the Finance Minister, the Chairperson of the Commission met with the President to present its recommendation. Thereafter, the Finance Minister advised the President that the recommended 7% remuneration increase was not affordable. The President set the salary increase of all public office-bearer's at 5% and, following approval by Parliament, published his decision.

ARMSA challenged the decision of the President in the High Court on the grounds of irrationality and reviewable administrative action under the Promotion of Administrative Justice Act (PAJA). The High Court upheld the irrationality ground but rejected the PAJA challenge. It set aside the decision and remitted it to the President for the decision to be taken afresh.

In the Constitutional Court, ARMSA sought confirmation of part of the High Court order in terms of section 172(2)(d) of the Constitution. The Commission opposed confirmation and

sought conditional leave to appeal against the decision of the High Court declaring the President's decision irrational. The Court, in a unanimous judgment by Nkabinde J, held that the determination by the President was "conduct" under section 172(2)(a) of the Constitution and therefore susceptible to confirmation by this Court.

The Court held further that the President's conduct was not administrative action reviewable under PAJA. The decision involved input from different functionaries at different levels of the process on an issue that goes to the heart of judicial independence. The decision was executive in nature and more than a decision taken by the bureaucracy whilst carrying out the daily functions of the State. The Court also rejected ARMSA's challenge that the decision was procedurally unfair. The Court held that ARMSA failed to show that its representations were not taken into account by the Commission when it made its recommendation to the President. In addition, the Magistrates Act does not require the President to hear Magistrates before determining their salary increase. The Court further held that the President's decision was rational as there is no indication that the Commission did not consider the different roles and responsibilities of Magistrates. Further, the reduction from 7% to 5% was based on expert advice and the President was not rigidly bound by the Commission's recommendation.

The application was accordingly dismissed and the order of the High Court set aside.