



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Minister of Defence and Military Veterans v Motau and Others**

**CCT 133/13**

**Date of hearing: 17 February 2014**

**Date of judgment: 10 June 2014**

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### MEDIA SUMMARY

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*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 handed down judgment partly upholding an appeal against a judgment and order of the North Gauteng High Court, Pretoria.

In August 2013 the Minister of Defence and Military Veterans terminated General Motau and Ms Mokoena's (the first and second respondents) membership of the Board of the Armaments Corporation of South Africa SOC Ltd (Armcor). General Motau and Ms Mokoena had served as Chairperson and Deputy Chairperson respectively. The termination of their services was undertaken in terms of section 8(c) of the Armaments Corporation of South Africa Limited Act (Armcor Act), which permits the Minister to remove board members on good cause shown. In justifying her decision, the Minister cited various procurement projects which had failed to progress timeously as a result of the Board's decisions or inaction; Armcor's failure to conclude a service level agreement with the Department of Defence as required by the Armcor Act; and certain complaints which she had received about Armcor from the defence industry, indicating that the relationship between the two had broken down.

General Motau and Ms Mokoena successfully challenged their dismissal in the High Court, which ordered their reinstatement. The High Court held that the Minister's decision was administrative action, and thus subject to the Promotion of Administrative Justice Act (PAJA). The decision was reviewable under that Act as the Minister had made an error of law; had taken the decision in a procedurally unfair manner; and had acted for an ulterior purpose. The High Court also held that the Minister's decision to terminate Ms Mokoena's services was irrational.

The Constitutional Court granted the Minister leave to appeal to it directly and upheld the appeal in part. The majority judgment, written by Khampepe J (Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Majiedt AJ and Van der Westhuizen J concurring), concluded that the Minister's decision amounted to executive, rather than administrative, action. This was in part because the Minister's power to terminate the services of Board members is closely related to the formulation of policy and is an adjunct of her policy-making power. The decision could not, therefore, be reviewed under PAJA.

The majority also found that the Minister had the necessary good cause to terminate the services of General Motau and Ms Mokoena and that her decision was rational. Under their leadership, Armscor and its Board had failed to fulfil effectively its statutory mandate. However, the majority held that in making her decision, the Minister was required to comply with the process for the dismissal of directors as set out in the Companies Act. Her failure to do so rendered her decision unlawful. Nevertheless, the majority held that it would not be just and equitable in these circumstances to set aside her decision.

The dissenting judgment, written by Jafta J (Madlanga J and Zondo J concurring), concluded that the Minister's decision amounted to administrative action and that PAJA applied. It held that the decision had been taken in a procedurally unfair manner because General Motau and Ms Mokoena's membership was terminated without a hearing. The minority concluded that the decision was unlawful and would have set it aside.