



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Frederick Coenrad Daniel v President of the Republic of South Africa and Another**

**Case CCT 34/13**

**Date of Judgment: 27 June 2013**

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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.*

This morning the Constitutional Court handed down a judgment dismissing an application for the rescission of an order previously granted by this Court.

This application is a sequel to the application lodged in this Court by the applicant in case CCT 106/12 (first application). In that case the applicant sought an order declaring that the President's failure to appoint an independent Commission of Inquiry was inconsistent with the Constitution. In addition, the applicant sought an order directing the President to establish a Commission. Having considered that application, this Court issued an order on 31 January 2013 dismissing it as it was not in the interests of justice to hear the matter at that stage.

In the present application, the rescission of that dismissal order was sought on the ground that it was erroneously granted. The applicant asserted that this Court erred in characterising the first application as being one for direct access whereas, in fact, he approached the Court in the ordinary course of seeking relief obtainable only from this Court. The submission advanced was that the President's failure or refusal to appoint a Commission of Inquiry constitutes a failure to fulfil a constitutional obligation contemplated in section 167(4)(e) of the Constitution.

The Constitutional Court held that the general principle is that once a court has duly pronounced a final order, it becomes *functus officio* and has no power to alter the order. However the Uniform Rules of Court create exceptions to this principle. The Rules empower courts to rescind or vary orders in certain defined circumstances. It does authorise rescission of an order erroneously granted in the absence of a party affected by it, but the applicant is required to show that but for the error he relies on, this Court could not have granted the impugned order.

The Court held that section 84(2)(f) of the Constitution, which gives the President the power to establish a Commission of Inquiry, does not impose a duty on the President but a power which

may be exercised at his discretion. Accordingly, the President's failure to appoint a Commission of Inquiry does not amount to a failure to fulfil a constitutional obligation. The Court held that the failure to appoint the Commission of Inquiry in this case did not constitute an issue that fell within the exclusive jurisdiction of this Court. Therefore the impugned order was not granted erroneously.

The application for rescission was accordingly dismissed.