



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Derrick Grootboom v National Prosecuting Authority and Another**

**Case CCT 08/13**

**Date of hearing: 23 May 2013**

**Date of judgment: 21 October 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.*

Today the Constitutional Court upheld an appeal against a judgment of the Labour Appeal Court.

Mr Grootboom, a public prosecutor employed by the National Prosecuting Authority (NPA), was suspended in 2005 on allegations of misconduct. While on suspension he left South Africa to study in the United Kingdom for 12 months. During this period the NPA informed him that he had been discharged from the public service by operation of section 17(5)(a)(i) of the Public Service Act (Act). This section provides for the deemed discharge of public servants who absent themselves from their official duties for longer than one calendar month without their employers' permission.

Mr Grootboom applied to the Labour Court to have his deemed discharge set aside. He lost. The Labour Appeal Court also refused to set the discharge aside and thus dismissed his appeal. The Supreme Court of Appeal denied Mr Grootboom leave to appeal against the Labour Appeal Court's decision. Mr Grootboom then appealed to the Constitutional Court, contending that he had not absented himself from his official duties within the meaning of section 17(5)(a)(i) of the Act, and that his deemed discharge was therefore invalid.

The respondents were late in filing their answering affidavits and their written submissions, and did not provide a satisfactory explanation for the delays. Bosiello AJ, writing for the majority, refused to condone these delays. On the merits, the Court unanimously held that the requirements for Mr Grootboom's deemed discharge under section 17(5)(a)(i) had not been met because, in terms of his suspension, he had been barred from being at work and from performing any official duties. He therefore could not be said to have absented himself from those duties without his employer's permission.

In a separate judgment, Zondo J concurred in the order granted by Bosielo AJ, save that he did not agree that the respondents' condonation application ought to be refused.

The Constitutional Court granted leave to appeal, upheld the appeal with costs, and declared that Mr Grootboom had not absented himself from his official duties without permission and therefore remained in the NPA's employ.