



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

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Petersen and Others v SASSA (1106/2023, 1139/2023 and 1053/2023) [2024] ZASCA 173 (12 December 2024)

Today the Supreme Court of Appeal (SCA) upheld the appeals of the first and third appellants in part and dismissed it in part, with no costs ordered in respect of this order. The appeal of the second appellant was dismissed with costs. The order of the Gauteng Division of the High Court, Pretoria (the high court), was set aside and replaced.

In 2012, in order to curtail fraudulent claims for social grants, the respondent, the South African Social Security Agency (SASSA) commenced a process to re-register persons eligible to receive social grants. The process exposed large scale fraud on the part of criminal syndicates and employees of SASSA, which led to some 900 000 grants being cancelled. The first appellant, Dr Virginia Petersen (Dr Petersen), was the Chief Executive Officer (CEO) of SASSA. She was appointed as the CEO of SASSA in April 2011 for a five-year term, which ended in May 2016. Ms Bathabile Olive Dlamini (Ms Dlamini) was the Minister of Social Development. Ms Lumka Oliphant (Ms Oliphant), served as the Chief Director of Communications at the Department of Social Development (the Department). They were publicly identified as the officials promoting these efforts to eradicate fraud from the system for the payment of social grants. As a result, threats were made to their and their children's lives.

On 25 August 2013, Ms Oliphant was subjected to intimidation by three men while at a restaurant. A meeting was convened by the Gauteng Commissioner of Police with Ms Dlamini, Dr Petersen, the representatives of the South African Police Service (SAPS) and the State Security Agency. Following this meeting, Ms Dlamini, as the Minister, instructed Dr Petersen, as the CEO of SASSA, to procure security services for Ms Oliphant. On 28 August 2013, Dr Petersen sent a submission to Ms Dlamini, as the Minister. The submission referenced the intimidation of Ms Oliphant; recorded the Minister's request that SASSA should provide close protection services for Ms Oliphant and sought the Minister's approval to appoint a company to do so, at SASSA's expense. Further acts of intimidation were directed to the children of Ms Oliphant and Ms Dlamini. This was confirmed in a threat assessment undertaken by the SAPS.

Ms Dlamini, as the Minister, signed the submission. Dr Petersen then submitted a memorandum to the Bid Adjudication Committee (BAC), for SASSA to procure close protection services for Ms Oliphant, her children and the children of Ms Dlamini. The BAC signed the memorandum. As a result, SASSA procured these services from Vuco Security Solutions CC (Vuco). The services were paid for by SASSA and, in total, an amount of R3 499 606 was paid. On 17 November 2020, SASSA launched an application in the high court, to review and set aside SASSA's decision to procure the close protection

services and to declare the contract with Vuco unlawful. The review was opposed by Dr Petersen, Ms Dlamini and Ms Oliphant. The high court did not uphold any of the appellants' defences. The appeals are with leave of the high court.

The appellants advanced three preliminary defences on appeal that were rejected by the high court: delay, prescription and the binding application of the Intergovernmental Framework Relations Act 13 of 2005. These defences were rejected by the SCA, though for reasons that differed from those of the high court.

The core issue before the SCA, on the merits, was whether the South African Social Security Agency Act, (the Act) from which Dr Petersen derived her powers, permitted her to have taken the decision that SASSA would procure and pay for the close protection services that were rendered by Vuco to Ms Oliphant, her children, and the children of Ms Dlamini.

The SCA held that the decision of SASSA to procure and pay for close protection services was unlawful. While the Act may have permitted Dr Petersen to authorise the procurement of security services to protect employees of SASSA, under threat, Dr Petersen enjoyed no power to procure such services for the protection of an employee of the Department, her children, and the children of the Minister.

The SCA held further that the high court was correct in declaring the decision unlawful, reviewing it and setting it aside. However, the high court had failed properly to provide adequate reasons for its decision to impose just and equitable relief, and this warranted the SCA's consideration of this aspect of the matter.

The SCA found that it was not just and equitable to hold Dr Petersen liable to repay SASSA for the expenditure made by SASSA for security services that Dr Petersen had authorised. Dr Petersen, the SCA found, had acted in the bone fide belief that she was acting lawfully, to meet an urgent circumstance, and without benefit to herself. Nor, the SCA held, was it just and equitable to hold Ms Oliphant liable for the protection she had received. She was an employee under threat, and the decision to procure security for her and her children was taken by Dr Petersen and the Minister.

The SCA held however that Ms Dlamini had used her position of authority over Dr Petersen to require her to take steps to cause SASSA to procure and pay for protection services for an official of the Department, Ms Oliphant, Ms Oliphant's children, and her own children. Ms Dlamini failed to provide a proper explanation for her conduct. The SCA held therefore that Ms Dlamini unlawfully used her authority to secure a benefit for herself, which amounted to a clear abuse of power. The SCA lastly found that in view of the circumstances, it was just and equitable to hold Ms Dlamini liable to reimburse SASSA for the benefit she had received.

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