



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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Minister of Mineral Resources and Energy v Becker & Others (Case no 1199/23); National Nuclear Regulator & Another v Becker & Another (Case no 966/2023); Becker v Minister of Mineral Resources and Energy & Others (Case no 1013/2023) [2024] ZASCA 106 (28 June 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing three appeals against the decision of the Western Cape Division of the High Court, Cape Town. The first and second appeal include costs and those of two counsel, where so employed. And the third appeal each party bears its own costs.

Mr Peter Becker (Mr Becker) who was a director of the board of the regulator, was discharged as a director by the Minister of Mineral Resources and Energy (the minister) on 25 February 2022. As a result of the discharge, Mr Becker initiated review proceedings against the minister, the National Nuclear Regulator and the Chairperson of the Board of Directors of the National Nuclear Regulator (jointly referred to as the regulator) in the Western Cape Division of the High Court, Cape Town (the high court). The high court found favour in Mr Becker's claim and ordered that the decision of the minister was unlawful, unconstitutional and invalid in terms of s 172(1)(a) of the Constitution and that it should be reviewed and set aside.

As a result of the high court's findings, three appeals were brought against its decision before this Court. The first appeal was against Mr Becker, where the minister sought the appeal to be upheld with costs, including those of two counsel. Furthermore, that the order of the high court be set aside and replaced with one dismissing the application with costs, including those of two counsel. The second appeal was against Mr Becker, where the regulator sought identical relief to that sought by the minister. The third appeal was against the minister and the regulator, where Mr Becker sought an order for the high court's order to be upheld and for a paragraph to be inserted in the order of the high court that its paragraphs 1 and 2 'operate retrospectively'.

With regard to the first and second appeals, the SCA held that the minister's appeal and that of the regulator should be dismissed with costs, including those of two counsel based on the following reasons: (a) the minister wrongly believed that the board was supposed to advocate for nuclear activities because he believed that a person could not be part of the board if they resisted nuclear or were advocating against it. According to the SCA, the board's functions were not to advocate either for or against nuclear activities. Its function was to ensure that nuclear activities were undertaken in a safe manner. (b) the SCA held that resisting or advocating for nuclear energy – even publicly – was not misconduct for purposes of s 9 of the National Nuclear Regulator Act 47 of 1999 (the Act). (c) the minister unfoundedly stated that Mr Becker would be unable to 'make an objective decision, when presented with objective, scientific evidence in respect of the extension of the life of Koeberg', and therefore any decision he would make in that regard would be prejudiced as Mr Becker had already indicated his views as a member of the Koeberg Alert Alliance (the KAA). The Court further held that Mr Becker was well entitled to hold and maintain his views about the desirability of nuclear activities while being a member of the board. So was the case with the other board members like the minister's

representative on the board, Mr Maphoto, who plainly had strong views in favour of the desirability of nuclear power. And therefore, according to the SCA, this was arbitrary and irrational decision-making on the part of the minister who failed to treat persons alike in alike situations. (d) the minister wrongly believed that he could discharge a director in anticipation of bias or misconduct by that director. This, held the SCA, was no basis at all for a finding of misconduct. (e) the minister unfairly made up his mind before Mr Becker made representations concerning his discharge. The process, therefore, was procedurally unfair and irrational. The evidence demonstrated that the minister had decided to discharge Mr Becker, before he even received his written representations. Thus, the representations process was a sham.

Coming to the third appeal brought by Mr Becker, the SCA held that the relief sought by Mr Becker was legally unsustainable. It held that Mr Becker's three-year term on the board expired on 5 June 2024. It was not known whether those communities which could be affected by nuclear activities would want Mr Becker to represent them any longer on the board or whether they would prefer to nominate someone else. There was no evidence placed before the high court that the communities which may be affected by nuclear activities would want Mr Becker to represent them on the board of the regulator and that he would be the person who would carry their nomination. As a result, the SCA held that, Mr Becker's appeal should also fail with each party bearing its own costs in respect of this appeal.

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