



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

31 May 2019

STATUS: Immediate

**The Minister of Defence and Military Veterans and others v M T Maswanganyi
(739/18)**

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (the SCA) today upheld an appeal against a judgment and order of the Gauteng Division of the High Court, Pretoria (Raulinga J, sitting as court of first instance) (the high court). The matter concerned the interpretation of s 59(1)(d) of the Defence Act 42 of 2002.

The salient facts were briefly as follows. The respondent, Mr Mozamane Teapson Maswanganyi, a permanent member of the South African National Defence Force (SANDF), was convicted of rape and sentenced to life imprisonment. He successfully appealed against his conviction and sentence, which were set aside. After the sentence was imposed, Mr Maswanganyi immediately started serving his sentence until his release a few days after his appeal had been upheld. Upon the imposition of the sentence, Mr Maswanganyi's service in SANDF was terminated.

Mr Maswanganyi sought reinstatement to his post but the SANDF refused. It adopted the stance that his service was automatically terminated by operation of law in terms of s 59(1)(d) of the Defence Act. That section provides that, upon a sentence of imprisonment without the option of a fine being imposed upon a SANDF member by a criminal court, that member's service in the SANDF is terminated. The SANDF advised Mr Maswanganyi to follow the normal recruitment process for re-employment.

Mr Maswanganyi obtained relief against the SANDF in the high court. The decision of the Chief of the SANDF to apply s 59(1)(d) and not s 59(3) of the Defence Act or s

42 of the Military Discipline Supplementary Measures Act 16 of 1999 (the MDSMA) was set aside. The High Court also ordered the SANDF to reinstate Mr Maswanganyi to his post and to reinstate his salary and benefits, both retrospective from his date of arrest.

In upholding the appeal, the SCA held that the only provision which applied in the present instance was s 59(1)(d) of the Defence Act. The court held that s 42 deals with the enforcement of military discipline, whereas s 59 dealt with termination of service in the SANDF. The jurisdictional requirements for s 42 to be invoked were absent in the matter.

The SCA dismissed an alternative argument on behalf of Mr Maswanganyi that if s 59(1)(d) operated automatically in the case of the imposition of sentence, it also had to operate automatically in respect of reinstatement where the sentence is subsequently set aside. The SCA held that the section does not make provision for reinstatement at all. The court concluded that the SANDF was correct in requiring Mr Maswanganyi to follow the normal SANDF recruitment process for re-employment. The appeal was consequently upheld with costs, and the SCA substituted the high court's order with an order that Mr Maswanganyi's application be dismissed with costs.

-- ends --