



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 June 2009

Status: Immediate

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

On 1 June 2009 the Supreme Court of Appeal handed down judgment in *W W Gibbs and 23 others v Minister of Finance and Constitutional Development and 5 others* and dismissed, with costs, an appeal by magistrates against a judgment of the Pretoria High Court, in terms of which it was held that a system of merit awards which held monetary value was no longer legally valid.

In the past magistrates had been regarded as part of the civil service. Civil servants and magistrates received merit awards as special recognition for above average performance. In the past magistrates were responsible for various administrative duties including the collection of revenue, the processing and payment of social benefits, the processing and administration of labour contracts.

In 1994 a new system for the appointment of magistrates was

introduced. In terms of the provisions of the Magistrates Act 90 of 1993 read with the provisions of the Magistrates' Courts Act 32 of 1944, magistrates are appointed by the Minister of Justice and Constitutional Development after consultation with the Magistrates Commission. They were no longer required to perform administrative functions. This change was the beginning of a new era in line with the Constitution to ensure and promote an independent judiciary.

Within the civil service itself there were changes. From 1 July 1999 merit awards were done away with and replaced with performance management and development schemes. Transitional arrangements to allow for departments to establish such schemes allowed merit awards in some instances to continue up until December 2000.

Notwithstanding these changes the department continued with the system of merit awards up to and including 2003. In its judgment the SCA stated that since evaluations were required for merit awards, and since administrative tasks had been abolished for magistrates, it was difficult to understand what in fact was being evaluated. From 1997 the department withdrew from the evaluation procedure and left the magistrates to their own devices.

During 2004 the Magistrates Commission resolved that the system of merit awards should be abolished, recording that they were inconsistent with judicial office and impinged on the independence of the judiciary. In February 2005 the second respondent, the Director-General of the Department of Justice and Constitutional Development, decided to terminate the payment of merit awards. It is that decision that led to an application by affected magistrates in the Pretoria High Court for the

continuation of the system and payment of the benefits flowing from it.

The SCA held that there was no statutory basis for the system of merit awards and concluded that the Pretoria High Court's decision in this regard was correct. The SCA stated that merit awards detracted from judicial independence and that judicial officers did not require incentives to comply with their oath of office. It commended the Magistrates Commission and the department for putting an end to merit awards.