SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

1 June 2009

STATUS: Immediate

Jan-Paul Kriel v The Legal Aid Board and others
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 today dismissed an appeal against a judgment of the Pretoria High Court. The court held that the dismissal of the appellant did not amount to an administrative act and he had therefore failed to establish his cause of action.

The appellant, an attorney employed by the first respondent, was dismissed following a disciplinary enquiry. The appellant relied on the provisions of the Promotion of Administrative Justice Act 3 of 2000 to assert his right to fair administrative action for an order setting aside his dismissal. He launched proceedings in the high court where he sought an order to review, correct and set aside the decision to dismiss him. A point of law relating to the court's jurisdiction to hear the matter was raised. In dismissing the application, the high court held that the disciplinary hearing and dismissal did not constitute administrative action and that the Labour Court had exclusive jurisdiction to deal with the matter.

The SCA held that the true issue before it was not so much whether the high court had jurisdiction to determine the application but rather whether the dismissal constituted 'administrative action' as envisaged by PAJA. The SCA held that a dismissal from employment is not an administrative act which can be reviewed. It held further that the appellant was not left without a remedy as it was open to him to challenge the termination under the Labour Relations Act and to have brought a review of his dismissal in the Labour Court in terms of section 158(1)(g).

The SCA concluded that the court a quo correctly dismissed the application, not on the basis that it lacked jurisdiction but due to the fact that the dismissal of the appellant did not constitute administrative action.

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