



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: 30 September 2015

Status: Immediate

THE NATIONAL TREASURY v KUBUKELI

*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*

1. On 18 January 2013 the *Daily Despatch* newspaper carried an article containing allegations of financial irregularities in the office of the executive mayor of the second appellant, the OR Tambo District Municipality (the municipality). In the light hereof, the council of the municipality requested the first appellant, the National Treasury, to conduct a forensic investigation into these allegations. The National Treasury mandated a team of investigators (the Treasury team) to conduct the investigation. The executive mayor was notified of the investigation and requested to make himself and the staff in his office available for interviews by the Treasury team. The respondent, Mr Kubukeli, is employed by the municipality in the office of the executive mayor, as the latter's bodyguard. The political advisor of the executive mayor responded to the request on his behalf. He made it clear that the executive mayor and his staff would not participate in the investigation.

2. The Treasury team nevertheless continued with the investigation. It compiled a report containing recommendations to the municipality. The recommendations dealt mainly with improvements to the financial management and internal control of the municipality. The recommendations, however, included that disciplinary proceedings be instituted against Mr Kubukeli and that losses suffered by the municipality be recovered from him.

3. Mr Kubukeli maintained that he received no notice of the request for an interview. The National Treasury and the municipality accepted this assertion for purposes of argument. Mr Kubukeli launched an application in the Eastern Cape Local Division of the High Court, Mthatha in which he sought an order that the investigation of the Treasury team and its report be declared unlawful and unconstitutional and be set aside. The high court granted the order sought, but granted leave to appeal to the Supreme Court of Appeal (SCA).

4. Today the SCA upheld the appeal. The SCA held that the high court misconceived the nature of the enquiry and erred in granting the relief claimed by Mr Kubukeli. The enquiry was whether under the rule of law the conducting of the investigation and the making of recommendations to the municipality without the participation of Mr Kubukeli, were rationally related to the purpose for which these powers were given to the National Treasury. The SCA held that the investigation, report and recommendations of the National Treasury without the participation of Mr Kubukeli, were founded on reason and were not arbitrary or irrational.

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