



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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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.

Mvoko v SABC (1066/2016) [2017] ZASCA 139 (29 September 2017)

Today the Supreme Court of Appeal (SCA) granted Mr Vuyo Mvoko leave to appeal and went on to uphold an appeal against an order of the Gauteng Local Division (High Court), Johannesburg.

Mr Mvoko, a journalist, applied to the SCA in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 (the SC Act), for leave to appeal against an order of the High Court which dismissed with costs an application by him for an order of specific performance of a written agreement concluded with the respondent, the South African Broadcasting Corporation SOC Limited (the SABC). The application for leave to appeal followed a refusal by the court below to grant such leave. The SCA referred the application for leave to appeal for oral argument and directed the parties to argue the merits of the appeal.

The issues on appeal arose within the context of the following facts: From 2002 to 2006 Mr Mvoko was employed by the SABC as its Group Political Editor. From 2011 until his application brought in the court below, he was an independent contractor with the SABC in terms of written agreements, including the one which was at the centre of the appeal. On 7 July 2016, Mr Mvoko received notification that the SABC had suspended his services because, so it was alleged, he had breached the agreement by bringing its name into disrepute through his comments in a newspaper article entitled 'My hell at the SABC', published in *The Star* Newspaper on 6 July 2016.

The true cause of Mr Mvoko's suspension was a key point of contention between the parties. On the one hand, the SABC viewed his publication in *The Star* newspaper as the primary contravention of the contract, constituting a material breach of the agreement. On the other hand, Mr Mvoko viewed it as the apex of a series of events indicating SABC managerial political interference with editorial decisions, a stifling of independent journalistic thought, and a breach of his right to freedom of expression. To Mr Mvoko, the publication of the newspaper article did not constitute a breach of the agreement as he had sought thereby to hold the SABC to its constitutional and statutory mandates, rather than bring its name into disrepute. He thus argued that his services were unlawfully terminated and demanded to 'be scheduled' in accordance with the written agreement.

The SCA granted him leave to appeal and upheld his appeal. It set aside the order of the court below and substituted it with an order in terms of which the SABC was ordered to schedule his service for the remainder of the term of the agreement. The court held that the SABC must conduct itself within constitutional parameters and its statutory mandate. It reasoned that in terms of both the Constitution and the Act, the highest standards of journalism and integrity in public administration can rightly be expected of the SABC. The uncontested political interference complained of by Mr Mvoko was inexcusable, and rather than rendering him liable to disciplinary action, it called for an enquiry into the conduct of the SABC in its role as public broadcaster. Moreover, the court found that the jurisdictional facts for the proper exercise of the right to suspend in terms of the contract were not present.