

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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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.

**Roering and Another NNO v Qedani Mahlangu**

Ms Qedani Mahlangu is the MEC for Infrastructural Development in Gauteng. After the general election in 2009 she was appointed as the MEC for Health in that province. Soon after her appointment, a contract between the provincial Department of Health and 3P Consulting (Pty) Ltd was suspended and in July 2009 the Department advised 3P Consulting that it would no longer perform in terms of that contract. This was challenged in the courts and the validity of the contract was upheld. Thereafter 3P Consulting sued the Department for an amount of some R99 million. The proceedings were defended and referred for trial.

Before the trial 3P Consulting was placed in liquidation. Its claim against the Department was its sole substantial asset. The liquidators applied for the appointment of a commissioner in terms of sections 417 and 418 of the Companies Act 61 of 1973 to investigate the company's affairs and to determine whether it should continue with the litigation against the Department to recover the claim. After hearing a considerable body of evidence the commissioner issued a summons for Ms Mahlangu to attend the enquiry and give evidence of the matters within her

knowledge concerning the relationship between the Department and 3P Consulting.

Initially Ms Mahlangu co-operated with the enquiry and asked for time to refresh her memory of events before giving evidence. But she then launched proceedings in which she alleged that the summons was an abuse as it was directed at obtaining information from her about the merits of the claim and the Department's defence to it. This contention was upheld by the High Court and the summons was set aside.

The SCA today unanimously set aside the High Court's decision. It pointed to the importance in the public interest of an enquiry into the affairs of a company that has failed. Such enquiries are essential to ascertain what went wrong and who was responsible for it. The fact that civil litigation may flow from the enquiry, or be contemplated, or have been instituted by the liquidators, does not provide grounds for regarding the enquiry, or the summoning of a witness, as an abuse. There were plainly grounds for the liquidators and the commissioner to believe that Ms Mahlangu could give relevant evidence about the dealings between 3P Consulting and the Department. This was confirmed by her lawyers, who described her as a key witness in the case. In the result the summons stands and Ms Mahlangu will be obliged to give evidence in terms of it at the enquiry.