

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.

National Police Commissioner v Ngobeni

The SCA today upheld an appeal against the decision of the KwaZulu-Natal Division of the High Court, Durban setting aside the suspension of Lieutenant General Ngobeni, the provincial police commissioner, KwaZulu-Natal.

The then National Police Commissioner had established a board of inquiry into alleged misconduct or unfitness for office of Lieutenant General Ngobeni arising out of a surprise birthday party arranged by a Durban businessman, Mr Panday, for her husband, also a senior policeman. This was challenged on the basis that the National Police Commissioner lacked the powers under section 9, read with section 8, of the Police Service Act 68 of 1995 (the Act) to establish a board of inquiry unless he had first referred the matter to the Executive Council, KwaZulu-Natal and it had in turn referred the matter to the national Minister of Police, who had authorised the establishment of a board of inquiry. The challenge was upheld in the High Court and both the establishment of the board of inquiry and the suspension were set aside.

On appeal the SCA pointed out that s 9 of the Act deals with possible misconduct or unfitness for office, while s 8 deals with a loss of confidence in the national or a provincial police commissioner. The Act provides in the latter situation that the parties involved in their appointment, namely, the Cabinet in the case of the national commissioner and the relevant provincial Executive Council or the national commissioner in respect of a provincial police commissioner are given powers to establish or have established a board of inquiry and in the case of a provincial police commissioner the national commissioner is given the power to suspend.

The provisions of s 8 are incorporated with the necessary changes in s 9 dealing with misconduct or unfitness for office. As the national commissioner is empowered under s 8 to establish a board of inquiry and suspend a provincial commissioner when he or she has lost confidence in the provincial commissioner, the same is true of a situation where the national commissioner believes that there is misconduct or possible unfitness for office to be investigated. This does not require any involvement on the part of the provincial executive council. Accordingly the appeal was upheld and the original application dismissed.