

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 24 May 2018

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.

**Minister of Defence and Another v Xulu [2018] ZASCA 65.**

The SCA today dismissed an appeal by the Minister of Defence and the Chief of the South African Defence Force against an order of the full court of the Gauteng Division of the High Court, Pretoria setting aside a decision not to renew Mr Xulu’s contract under which he served in the SANDF,

Mr Xulu joined the SANDF on 29 July 1996, initially for a fixed term of two years. In 1998 his contract was extended until 2000 in which year it was further extended until 2005. The final extension was in 2005 until 31 July 2011. At the end of November 2010 he was informed by the SANDF that it did not intend to renew his ‘employment contract’ when it expired on 30 June 2011. Notwithstanding his own representations and detailed representations made on his behalf by his attorney, he was informed on 29 April 2011 that his contract would not be renewed.

The failure to renew Mr Xulu’s contract was in many respects inconsistent with the SANDF’s policy in dealing with non-renewal of fixed term contracts. The policy stipulated that the administrative process leading to a decision on non-renewal would commence with a

recommendation by the soldier's commanding officer that his contract not be renewed and the soldier being afforded an opportunity to make representations why it should. In Mr Xulu's case his commanding officer strongly recommended that his contract be extended. The person who instigated its non-renewal was also the person who made the decision rendering the process unfair.

The SCA held that the decision not to renew Mr Xulu's contract constituted administrative action and fell to be reviewed in terms of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA). On several grounds the decision fell to be set aside under PAJA. The appeal accordingly failed. At the request of the parties the court made an order to govern the consequences of that decision insofar as compensation for Mr Xulu was concerned.