

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 81056/14

- | | |
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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

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SIGNATURE

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DATE

In the matter between:

S.O.S SUPPORT PUBLIC BROADCASTING COALITION

First Applicant

FREEDOM OF EXPRESSION INSTITUTE

Second Applicant

THE TRUSTEES FOR THE TIME BEING OF THE

MEDIA MONITORING PROJECT BENEFIT TRUST

Third Applicant

and

SOUTH AFRICAN BROADCASTING CORPORATION

SOC LIMITED

First Respondent

MINISTER OF COMMUNICATIONS

Second Respondent

HLAUDI MOTSOENENG

Third Respondent

AND

S.O.S SUPPORT PUBLIC BROADCASTING COALITION **First Applicant**

FREEDOM OF EXPRESSION INSTITUTE **Second Applicant**

THE TRUSTEES FOR THE TIME BEING OF THE

MEDIA MONITORING PROJECT BENEFIT TRUST **Third Applicant**

and

SOUTH AFRICAN BROADCASTING CORPORATION

SOC LIMITED **First Respondent**

MINISTER OF COMMUNICATIONS **Second Respondent**

THE BOARD OF DIRECTORS OF

THE SOUTH AFRICAN BROADCASTING

CORPORATION SOC LTD **Third Respondent**

THE PRESIDENT OF THE REPUBLIC OF

SOUTH AFRICA **Fourth Respondent**

THE SPEAKER OF THE NATIONAL ASSEMBLY **Fifth Respondent**

THE PORTFOLIO COMMITTEE FOR COMMUNICATIONS

OF THE NATIONAL ASSEMBLY **Sixth Respondent**

MINISTER OF TRADE INDUSTRY **Seventh Respondent**

MINISTER OF PUBLIC ENTERPRISES **Eighth Respondent**

COMPANIES AND INTELLECTUAL**PROPERTY COMMISSION****Ninth Respondent****RACHEL KALIDASS****Tenth Respondent****RONNIE LUBISI****Eleventh Respondent**

SUMMARY

MATOJANE J

These are two applications which were head together focusing on two key aspects of the Minister's powers in respect of the SABC board.

The SABC's Memorandum of Incorporation (MoI) and the SABC Board Charter confer extensive powers on the Minister in respect of all three executive directors. This includes giving the Minister a veto power in respect of their appointment; the power to approve the terms and conditions of their appointment; the powers to determine the term of office, re-appointment and acting appointments; and the power to approve any disciplinary proceedings and suspension from office of the Executive Directors.

The court held that these provisions of the MoI and Board Charter are in breach of the Broadcasting Act, particularly section 13(11) which provides that the SABC Board, not the Minister, must control 'the affairs' of the SABC.

The second application, SABC 2 concerns the power of the Minister to remove all of the directors of the SABC, including the non-executive directors. The Minister contends that she has a right to remove the directors from office. She contends that this power flows from section 71 of the Companies Act, which she followed.

The Minister has exercised these powers by dismissing three non-executive directors of the SABC Board. The court held that the removal of the directors is regulated by sections 15 and 15A of the Broadcasting Act, not the Companies. In instances where there was conflict between the Companies Act and the Broadcasting Act, the latter would prevail. Those sections require that the removal of the directors to be effected by a decision of the National Assembly, when such removal is warranted.

By permitting the removal of a board member unilaterally at the instance of the Minister as sole shareholder and removal by simple majority vote of the Board, section 71 undermines their independence. The threat of removal without any oversight, on any ground, and without due enquiry, would render Board members not likely to express views not aligned with that of the government or the majority Board members.

The Broadcasting Act is not listed under section 5(4)(b)(i) of the Companies Act, accordingly, none of the provisions of the Broadcasting Act, is made applicable in the event of inconsistency with the Companies Act. This violates section 7(2) and 16 of the Constitution and the relevant provisions of the Companies Act are invalid to this extent.