



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

27 May 2010

STATUS: Immediate

Samancor Group Pension Fund and Samancor Chrome

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

The Supreme Court of Appeal today upheld an appeal against an order of Swart AJ (South Gauteng High Court) wherein he ordered that the fourth respondent (Mr Swanepoel) was entitled to compensation by the appellant for payment of his early retirement benefits due to illness and setting aside the determination made by the adjudicator.

Mr Swanepoel has been employed by the first respondent (Samncor) as a security officer since August 1991. After a blackout while at work during 1996 Mr Swanepoel was sent to various doctors for examination and evaluation. One test conducted by one doctor, Dr Kriel & others concluded that he was permanently ill. Consequently to these findings Samancor tried to find an alternative employment for him of whom he later refused and preferred to be paid his medical benefits and thereafter he resigned.

As a result of his resignation Mr Swanepoel became entitled to his pension benefits which were later paid to him. He later lodged a claim to Sanlam which was the underwriter of the fund for payment of his ill health benefits.

After he found out that there was no claim lodged on his behalf by Samancor he lodged a complaint with the pension adjudicator and the adjudicator ordered that his claim be considered and he be paid what is due to him. Samancor later forwarded all the relevant documents necessary for the consideration of Mr Swanepoel's application to the Pension Fund. Samancor thereafter received a response from the fund advising them that the trustees have agreed that they will only consider Mr Swanepoel's claim if it was submitted at the time of Mr Swanepoel's illness.

After failed attempts to settle the matter Mr Swanepoel approached some certain attorneys to institute legal proceedings against Samancor. Subsequent to that Samancor launched an application to the high court seeking an order condoning its failure to launch such application within the time prescribed by the Act and setting aside the adjudicator's determination.

The high court granted a rule nisi calling upon the pension fund to give reasons why it should not be ordered to pay Mr Swanepoel the ill health benefits. The application was later opposed by the pension fund.

The high court granted the condonation as prayed by Samncor and set aside the adjudicator's determination.

The SCA found that the high court erred in granting the condonation because of the prejudice to the Pension fund and because the appeal was perempted. The SCA further found that Samancor should not have been allowed to challenge the determination of the adjudicator and the high court should have dismissed the application. For the above reasons the SCA allowed the appeal by the Samancor group pension fund.

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