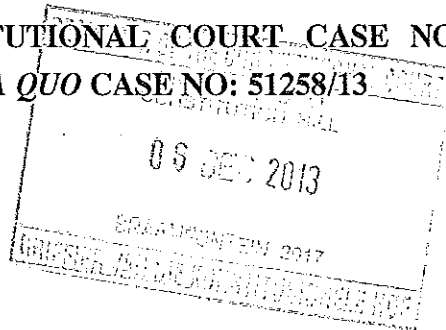


**IN THE CONSTITUTIONAL COURT
OF SOUTH AFRICA**

CONSTITUTIONAL COURT CASE NO: 133/2013
COURT A QUO CASE NO: 51258/13



In the matter between:

**THE MINISTER OF DEFENCE AND
MILITARY VETERANS**

Applicant
(First Respondent *a quo*)

and

MAOMELA MORETI MOTAU

First Respondent
(First Applicant *a quo*)

REFILOE MOKOENA

Second Respondent
(Second Applicant *a quo*)

**ARMAMENTS CORPORATION OF
SOUTH AFRICA (SOC) LIMITED**

Third Respondent
(Second Respondent *a quo*)

APPLICATION

FOR LEAVE TOE APPEAL AGAINST THE WHOLE OF THE JUDGMENT AND THE COST ORDER HANDED DOWN BY THE HONOURABLE JUSTICE M F LEGODI IN THE NORTH GAUTENG HIGH COURT, PRETORIA (REPUBLIC OF SOUTH AFRICA) ON 18 SEPTEMBER 2013.

ON BEHALF OF APPLICANT

THE STATE ATTORNEY
S A L U Building
Cnr Francis Baard &
Thabo Sehume Streets
PRETORIA

Tel: 012 309 1500
Fax: 012 309 1649
Ref: Mr M Mhambi/5767/13/Z39/mm

ON BEHALF 1ST & 2ND RESPONDENTS

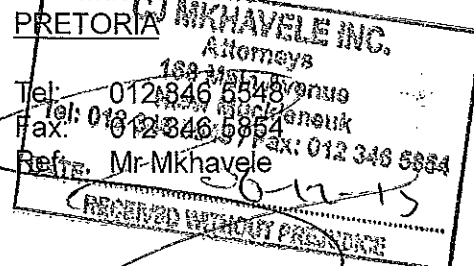
MKHABELA HUNTLEY ADEKEYE
ATTORNEYS

c/o MKHAVELE INC

168 Main Street

New Muckleneuk

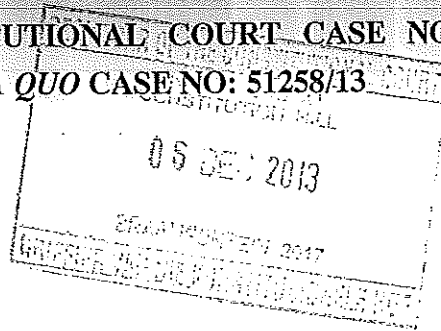
PRETORIA



HEADS OF ARGUMENT

IN THE CONSTITUTIONAL COURT
OF SOUTH AFRICA

CONSTITUTIONAL COURT CASE NO: 133/2013
COURT A QUO CASE NO: 51258/13



In the matter between:

**THE MINISTER OF DEFENCE AND
MILITARY VETERANS**

Applicant
(First Respondent *a quo*)

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(Second Applicant *a quo*)

**ARMAMENTS CORPORATION OF
SOUTH AFRICA (SOC) LIMITED**

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APPLICATION

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ON BEHALF OF APPLICANT

ON BEHALF OF 1ST & 2ND RESPONDENTS

MR M M HAMBILI
SOLICITOR GENERAL
STATE ATTORNEY GENERAL
PRETORIA

Tel: 012 309 1500
Fax: 012 309 1649
Ref: Mr M Mhambili/5767/13/Z39/mm



HEADS OF ARGUMENT

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Constitutional Court Case No: CCT133/13

In the matter between:

**THE MINISTER OF DEFENCE AND
MILITARY VETERANS**

Applicant

and

MAOMELA MORETI MOTAU

1st Respondent

REFILOE MOKOENA

2nd Respondent

**ARMAMENTS CORPORATION OF SOUTH
AFRICA (SOC) LIMITED**

3rd Respondent

PRACTICE NOTE: PRACTICE DIRECTION 5 IN TERMS OF RULE 32(2)

1 **NAME AND NUMBER OF THE MATTER**

1.1 Applicant: The Minister of Defence and Military Veterans;

1.2 First Respondent: Maomela Moreti Motau;

1.3 Second Respondent: Refiloe Mokoena;

1.4 Third Respondent: Armaments Corporation of South Africa

is justified.

4 PORTIONS OF THE RECORD NECESSARY FOR THE DETERMINATION OF THE MATTER

- 4.1 Notice of Motion, pp 1-4;
- 4.2 Founding Affidavit, pp 5-19;
- 4.3 Annexure "RM2", pp 23-25;
- 4.4 Opposing Affidavit by the Applicant, pp 35-69;
- 4.5 Annexure "1" to the Opposing Affidavit, pp 81-84;
- 4.6 Paragraphs 5.3 and 5.4 of annexure "K" to the Opposing Affidavit, pp 87-93;
- 4.7 Supporting Affidavit of Antonie Visser, annexure "L" to the Opposing Affidavit, pp 94-103.

5 ESTIMATION OF THE DURATION OF ORAL ARGUMENT

Approximately three hours.

6 SUMMARY OF APPLICANT'S ARGUMENT

- 6.1 First and Second Respondents were appointed as the

- 6.6 In terms of the definition of “*administrative action*” and specifically Section 1(b)(aa) the exercise of any executive function in terms of Section 85(2)(e) of the Constitution is excluded from the definition of administrative action in the PAJA;
- 6.7 With reference to the matter of *Masethla v President of the Republic of South Africa & Another* 2008 (1) SA 566 (CC) (specifically paragraphs [76] and [77]) the dismissal of a person appointed by the Minister constitutes the exercise of executive function and not administrative action;
- 6.8 The High Court therefore should have found that the dismissal of the Respondents as directors of the Board of Armscor constituted executive action by the Minister and the finding of the High Court that the Minister should have followed an administratively fair process as set out in Section 3 of the PAJA is, with respect, wrong;
- 6.9 The decision by the Minister to terminate the services of the Respondents complied with the requirements of legality and rationality as provided for in the matter of *Masethla v President of the Republic of South Africa & Another* 2008 (1) SA 566 (CC), para [81];

6.10 It is therefore respectfully submitted that the High Court erred in granting the relief sought by the Respondents, and the High Court should have dismissed the Application with cost, including cost of two counsel.

7 **LIST OF AUTHORITIES ON WHICH PARTICULAR RELIANCE
WILL BE PLACED DURING ARGUMENT**

7.1 *President of the Republic of South Africa & Others v South African Rugby Football Union & Others* 2000 (1) SA 1 (CC), para 141;

7.2 *Masethla v President of the Republic of South Africa & Another* 2008 (1) SA 566 (CC);

7.3 *Premier Western Cape & Others v Overberg District Municipality* 2011 (4) SA 441 (SCA);

7.4 *Democratic Alliance v President of the Republic of South Africa & Others* 2013 (1) SA 248 (CC);

7.5 *Affordable Medicines Trust & Others v Minister of Health & Others* 2006 (3) SA 247 (CC);

7.6 *Democratic Alliance & Others v Acting National Director
of Public Prosecutions & Others* 2012 (3) SA 486 (SCA).

M C ERASMUS SC
M C KGATLA
First Respondent's Counsel
Chambers
BROOKLYN/SANDTON
5 DECEMBER 2013