



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

**Case No: A126/2024
Court a quo: 48823/2020**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 14 November 2025

Signature: 

In the matter between:

EBRAHIM FISHER

Appellant

And

**THE MINISTER OF DEFENCE AND MILITARY
VETERANS**

First Respondent

THE SECRETARY FOR DEFENCE

Second Respondent

**THE CHIEF OF THE SOUTH AFRICAN NATIONAL
DEFENCE FORCE**

Third Respondent

THE CHIEF OF THE SOUTH AFRICAN NAVY

Fourth Respondent

THE CHIEF HUMAN RESOURCES

Fifth Respondent

THE MILITARY OMBUD

Sixth Respondent

Coram: Khumalo J, *et Nyathi & Millar JJ*

Heard on: 20 March 2025

Delivered: 14 November 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14H00 on 14 November 2025.

JUDGMENT

NYATHI J (KHUMALO *et* MILLAR JJ CONCURRING)

INTRODUCTION

- [1] This is an appeal against the judgment of the Honourable Acting Justice M Baloyi-Mbembele delivered on 20 July 2023, in which the appellant's application for review was dismissed with costs.

- [2] The appellant, Mr Ebrahim Fisher, sought to challenge the decision of the Military Ombud, which upheld the refusal by the South African National Defence Force (SANDF) to award him a Core Service System (CSS) contract following the expiry of his Military Skills Development System (MSDS) contract.
- [3] The relief sought included:
- [3.1] The review and setting aside of the Military Ombud's findings;
 - [3.2] An order directing the respondents to award the appellant a CSS contract and reinstate him in the SANDF from 1 February 2015;
 - [3.3] Payment of all associated allowances and benefits from that date;
 - [3.4] Costs of the application.

BACKGROUND

- [4] The appellant joined the SANDF on a two-year MSDS contract commencing 9 February 2013 and ending 31 January 2015.
- [5] During his service, he was implicated in a disciplinary matter involving the alleged use of dagga, resulting in a pending charge under section 46 of the Military Discipline Code.
- [6] His application for a CSS contract was considered by the Fleet Human Resources Division CSS Contract Allocation Board on 15 October 2014. He was not recommended due to the pending disciplinary charge.

- [7] The appellant was not afforded an opportunity to make representations prior to the board's decision. He was informed in December 2014 that he would not be awarded a CSS contract.
- [8] His military court case concluded on 1 July 2016 with an acquittal. Subsequent internal recommendations suggested he be considered for a CSS contract, but no contract was awarded.
- [9] The appellant pursued internal grievance procedures and ultimately lodged a complaint with the Military Ombud, who found the decision not to award the contract was fair and in accordance with SANDF policy.

ISSUES FOR DETERMINATION

- [10] The central issues for determination are:
- [10.1] Whether the appellant had a legitimate expectation to be awarded a CSS contract;
- [10.2] Whether the Military Ombud's decision is reviewable under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA");
- [10.3] Whether the respondents acted procedurally and substantively fairly in declining to award the CSS contract.

LEGITIMATE EXPECTATION

- [11] The doctrine of legitimate expectation, as established in *Administrator, Transvaal v Traub*¹, requires that an expectation must be reasonable, based on clear and unambiguous representations, and that the affected party must be afforded procedural fairness.

¹ 1989 (4) SA 731 (A).

- [12] The appellant's reliance on internal communications not addressed to him, and on general provisions of Admin Instruction 24/14, does not meet the threshold for a legitimate expectation.
- [13] The MSDS contract does not create an automatic entitlement to a CSS contract. The appellant's disciplinary status at the time of consideration was a relevant factor under the applicable policy.
- [14] The absence of a recommendation from his commanding officer further undermines any claim of entitlement.

REVIEW OF THE MILITARY OMBUD'S DECISION

- [15] The Military Ombud was established under the *Military Ombud Act* 4 of 2012 ("the Act").
- [16] Section 13 of the Act permits review of the Ombud's decisions by the High Court within 180 days.
- [17] The Ombud's role is investigative, not appellate. The appellant was afforded an opportunity to comment on the preliminary report but failed to do so.
- [18] In *Mokheseng v Minister of Defence and Military Veterans and Others* (11458/2021) [2022] ZAGPPHC 919 (23 November 2022) in para 44, the court found that the decision of the Military Ombud does amount to administrative action as contemplated by PAJA and consequently that the applicant should have proceeded in terms of PAJA.
- [19] In the case of *Temane v Minister of Defence and Military Veterans and others* [2019] JOL 45171 (GP) the findings and recommendations by the Military Ombud were reviewed and set aside in terms of PAJA.

- [20] In the case *Edgar Davids v The Minister of Defence and Military Veterans and Others and Zilta Miles v The Minister of Defence and Military Veterans and Others* (854/2023) [2024] ZASCA 171 (12 December 2024) para 8, the court held that if the Ombud dismisses the complaint, such a decision may be reviewed by the high court in terms of section 13, but short of a successful review, the decision is final and binding.
- [21] The Ombud's findings were based on policy compliance and financial constraints, and no procedural irregularity or irrationality has been demonstrated.
- [22] The decision is therefore not reviewable under PAJA, quite interestingly, the period within which an aggrieved party should take his matter on review in section 13 of the Act, mirrors that stipulated in PAJA.

CONCLUSION

- [23] The appellant has failed to establish a legitimate expectation or any procedural unfairness in the respondents' conduct.
- [24] The Military Ombud's decision was lawful, rational, and procedurally fair.
- [25] The appeal must accordingly fail.
- [26] It is trite that costs are a matter for the exercise of judicial discretion. On consideration of the matter as a whole, given the particular circumstances, there will be no order for costs.

ORDER

- [27] In the circumstances, I propose the following order:

[27.1] The appeal is dismissed.

[27.2] There is no order as to costs.



JS NYATHI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED



NV KHUMALO

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE,



A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 25 MARCH 2025
JUDGMENT DELIVERED ON: 14 NOVEMBER 2025

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