



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 01 December 2008

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.

**HIGHVELD STEEL AND VANADIUM CORPORATION LTD V H F M OOSTHUIZEN**

The Supreme Court of Appeal today upheld an appeal brought by Highveld Steel and Vanadium (Highveld) against the judgment of the Pretoria High Court which dismissed its application to intervene in proceedings launched by its erstwhile employee, Mr Oosthuizen. In the latter proceedings Mr Oosthuizen challenged a decision taken by the boards of Highveld's pension funds to withhold payment of his pension benefits pending the final determination of a claim for damages allegedly suffered by Highveld as a result of his alleged acts of theft, dishonesty and fraud.

The governing Act, the Pension Funds Act 24 of 1956, and the pension funds rules do not expressly confer the power to withhold payments of pension benefits and the Pretoria High Court had found that such power could not be implied. Its reasoning was that the relevant provisions of the Act contained in s 37D are to be interpreted restrictively and do not

allow a deduction from a member's pension benefits except in the circumscribed instances mentioned in the section which were not met in the present case.

The Supreme Court of Appeal rejected these findings pointing out that Highveld did not seek a reduction of or deduction from Mr. Oosthuizen and merely asked for payment of his benefits to be delayed until its action against him is resolved. The court held that the object of s 37D is to protect the employer's right to pursue the recovery of money misappropriated by its employees. The court held further that to give effect to that purpose the section had to be interpreted purposively to include the power to withhold payment of a member's pension benefits pending the determination or acknowledgement of such member's liability.

The SCA however cautioned the pension funds to exercise this discretion with care and balance the competing interests with due regards to the strength of the employer's claim and, if necessary, to impose conditions on the employees to do justice to the case.