



Old Mutual Appeal Summary

4 December 2019

OVERVIEW

- The appeal against the high court judgement which temporarily reinstated Peter Moyo as CEO (the Appeal, Case No: A5041/19)) is a key legal battle in this multi-faceted dispute.
- The main issue is whether OM had the right to terminate the employment contract in the manner that it did. This is the question that will be determined by the appeal court on Wednesday 4 December 2019.
- OM's submissions repeatedly refer to the breakdown of the relationship between the parties and argues:
 - PM "clearly mischaracterised the basis on which the contract was terminated"
 - OM complied with the terms of PM's contract
 - *"A board cannot be expected to retain ... an executive employee who makes unfounded accusations of delinquency against all the directors ..."*
 - *"... the conflict of interest ... has become more exaggerated"*

THE APPEAL SUMMARY

- OM has made various submissions to the court ahead of the appeal, arguing that the court erred in ordering PM's interim reinstatement in July.
- OM's submissions repeatedly refer to the breakdown of the relationship between the parties, e.g.:
 - "[PM's] contract was terminated on notice for loss of confidence, trust and mutual respect" (Application for Leave to Appeal, 31);
 - "the requisite relationship of trust and confidence ... does not exist" (First and Second Appellants' heads of argument, para 93.3);
 - See also First and Second Appellants' heads of argument 138, 151 and Heads of argument of the 3rd to 16th appellants, 4.
- "... confidence in his [PMs] appointment forms an inherent and essential requirement of his ... continued employment ..." (Heads of argument of the 3rd to 16th appellants, 2).
- PM was paid 'over R35m' in 2018 (Heads of argument of the 3rd to 16th appellants, 1)
- PM was offered R4m, in lieu of notice (First and Second Appellants' heads of argument, 10).
- PM "clearly mischaracterised the basis on which the contract was terminated" (First and Second Appellants' heads of argument, 26).
- OM had "sole discretion" over whether to terminate (First and Second Appellants' heads of argument, 50).



- PM did not have to be given a pre-dismissal hearing (Heads of argument of the 3rd to 16th appellants, 15.1)
- OM complied with the terms of PM's contract (Heads of argument of the 3rd to 16th appellants, 24).
- "the court ought to have refused to order Mr Moyo's "temporary reinstatement" under the circumstances (First and Second Appellants' heads of argument, 104).
- "A board cannot be expected to retain ... an executive employee who makes unfounded accusations of delinquency against all the directors ..." (First and Second Appellants' heads of argument, 143).

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Notes to Editors:

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