

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

17-03-2020

## Labour Court Case: Demilitarisation

The Presiding Judge on 18 December 2019 ordered that the special plea of prescription raised by the employer, relating to claims before the period October 2011 was upheld. The implication thereof was that the PSA cannot institute a claim in respect of the period prior to 2011. PSA members mandated the Advocates to appeal the order. In addition, the special plea of prescription to claims arising after October 2011 was dismissed. This effectively means that the PSA can pursue its course of action with claims arising from 2013 onwards.

The Court considered the cause of action to be with effect from the date on which the applicants served Founding Affidavits. In addition, the final order in favour of PSA indicated that the failure of the PSA to comply with the *Institution of Legal Proceedings Against Certain Organs of State Act of 2002* (Act 40 of 2002) has no effect. Section 3 provides that the Court may grant an application if it is satisfied that the debt has not been extinguished by prescription and that there is good cause existing for the failure to deliver the notice and the respondent was not reasonably prejudiced by the failure to deliver the notice in time.

In light of the above order, the employer on 8 January 2020 lodged a notice of application to appeal. The Court subsequently granted the employer leave to appeal. Once judgement is delivered, members will be informed.

GENERAL MANAGER