

Arthur Gcali versus the MEC for Housing and Local Government and Others

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The applicant, who is unrepresented, applied to this Court for direct access under section 167(6)(a) of the Constitution read with Constitutional Court Rule 17. The respondents have filed a notice of their intention to oppose the matter.

The applicant sued the first five respondents in the Transkei High Court (the High Court), for damages for his wrongful dismissal as Town Clerk of the then Butterworth Municipality. He also claimed damages based on various alleged defamatory statements made by some of the respondents. The application centers around three High Court hearings. At the first, counsel for the respondents argued that the applicant had, in affidavits before the High Court, made offensive remarks about the competence of the judges of the High Court that bordered on contempt of court. The High Court ordered the applicant to file an affidavit of apology and to pay the wasted costs of the hearing. When the second hearing took place, the applicant had not filed the affidavit of apology. Instead, he filed a notice showing that he was not prepared to comply with the High Court order of the first hearing and that he questioned the authority of the High Court to issue the order. The High Court barred him from taking any further steps in the matter until such time as he complied with the orders made in the first hearing. At the time of the third hearing, the applicant had filed an affidavit of apology but had not complied with the order to pay costs, which costs had not yet been taxed. On this occasion the High Court refused to grant the applicant or his legal representative audience and granted the relief sought by the respondents against the applicant.

In his present application the applicant contends that his constitutional rights have been infringed because (1) the Butterworth Transitional Local Council, the Butterworth Municipality and the fourth respondent are fictitious parties; and (2) his barring from being heard amounts to an infringement of his right to a fair hearing under section 34 of the Constitution. He seeks, amongst other prayers, the setting aside of the various judgments and orders of the High Court flowing from the three abovementioned hearings.

The Constitutional Court held that this application for direct access is in fact a disguised application for leave to appeal against the three judgments of the High Court. In order to succeed in his direct access application the applicant must show that it is in the interests of justice to grant him such direct access and that there are exceptional circumstances present. The Court was of the view that the applicant should first appeal against the orders he challenges, in the High Court and the Supreme Court of Appeal, since the issues raised are matters which should normally be disposed of in these courts before approaching the Constitutional Court. The difficulty the applicant found himself in was entirely of his own making, as he ignores court orders instead of appealing against them. Under these circumstances it is not in the interests of justice, so this Court held, to allow the applicant to approach it directly. All the prayers in the applications were therefore dismissed.

