

Explanatory Note

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

This case was heard by the Constitutional Court on the 16th November 1999. The Court had to decide whether certain sections of the Criminal Procedure Act which allows a person who has been convicted and sentenced by a High Court to appeal against that decision only if permission had been given by the High Court or Supreme Court of Appeal is consistent with the Constitution. The Court had to measure these sections against that part of the Constitution which gives to every accused person the right to a fair trial, including the right to appeal or review by a higher court.

In a previous case the Constitutional Court decided that these sections were consistent with the right to appeal in the interim Constitution. However, the Court had to reconsider this matter because the right to appeal is worded somewhat differently in the final Constitution. The Court concluded that the sections concerned in this case are consistent with the Constitution.

Mr J M Twala was convicted and sentenced by the Witwatersrand High Court. The High Court and the Supreme Court of Appeal refused him permission to appeal. Thereafter he wrote to the Constitutional Court asking for appropriate relief. Mr Twala's letter was not an application for leave to appeal in terms of the rules of the Constitutional Court. The President of the Court directed that it be regarded as an application for leave to appeal.

At the hearing the South African Human Rights Commission was represented by Mr Wessels. Mr Twala was represented by Mr L Weppener and Mr Coetzer who were appointed by the Johannesburg Bar Council at the request of the Court. It was argued on behalf Mr Twala and the South African Human Rights Commission that the final Constitution gives an accused person an absolute right of appeal on all issues regardless of the prospects of success. Mr Twala's counsel also relied on the fact that the right to appeal or review was formulated differently in the final Constitution compared to the Interim Constitution. They argued that this showed that the drafters of the Constitution intended to give all accused persons a right to appeal without any leave. The state, represented by Ms ECJ Wait, argued that the change of wording was not significant and that the Constitution gave to the accused the right to have the judgment of a court reassessed in a broad and fair way.

The Court unanimously dismissed the application. Justice Yacoob, speaking for the Court, concluded that there is no material difference between a convicted person's right to appeal to or review by a higher court contained in the Interim Constitution and in the final Constitution. He also concluded that the final Constitution requires that provision be made for a reassessment of the issues by a higher court than that in which the accused was convicted, and that any law concerned with the right to appeal must be fair.

2 DECEMBER 1999