

MOISE v TRANSITIONAL LOCAL COUNCIL OF GREATER GERMISTON

CCT 54/00
4 July 2001

Explanatory Note

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

In this judgment, the Constitutional Court, per Somyalo AJ, confirmed a finding by the Johannesburg High Court that section 2(1)(a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act of 1970 is unconstitutional. The section obliges plaintiffs wishing to sue an administration, local authority or any of its officers for damages for a wrongful act, to serve a written notice on the defendant within ninety days of the cause of action arising.

The Constitutional Court found that the section constituted a material limitation of section 34 of the Constitution, which guarantees the right to have disputes that can be resolved by the application of law decided in a fair public hearing before a court. Ninety days to give the notice was very short and the notice had to contain considerable detail of the particular occurrence and its consequences. The notice was therefore a real impediment to a court hearing. The possibility of applying for condonation to serve the notice out of time did not render the limitation immaterial, especially considering the prevalence of disadvantaged people in the country.

A Bill replacing the offending Act has already been adopted by the National Assembly and the government put forward no factual material or policy reasons to justify the limitation and was apparently not concerned that the provision would be invalidated. Therefore, considering the central importance of the right of access to court, the Court found that the violation could not be justified under section 36 of the Constitution.

Having declared the section invalid on the basis of section 34 of the Constitution, it was unnecessary to consider the argument raised by the Women's Legal Centre (an *amicus curiae*) that the section infringed the right to equality (section 9 of the Constitution).