



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**South African Police Service v Police and Prisons Civil Rights Union and Another**

**Case No: CCT 89/10  
[2011] ZACC 21**

**Date of Judgment: 9 June 2011**

---

### MEDIA SUMMARY

---

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

On 9 June 2011 the Constitutional Court handed down a judgment in an application for leave to appeal against a decision of the Labour Appeal Court which interpreted the meaning of an “essential service” as defined in the Labour Relations Act (LRA).

The Labour Appeal Court’s decision affirmed that only members of the South African Police Service (SAPS) employed under the South African Police Service Act (SAPS Act) were engaged in an essential service. It held that the employees of the SAPS employed under the Public Service Act (PSA) were non-member employees and did not engage in an essential service. The importance of this determination was that only those employees who were not engaged in an essential service were able to strike.

On appeal to the Constitutional Court, the applicant contended that the SAPS as a whole was defined as an essential service in the LRA, and therefore that all services – those carried out by members as well as those carried out by non-member employees – are essential to the effective functioning of the SAPS.

The respondents argued that the distinct use of “employee” and “member” throughout the SAPS Act indicated the legislature’s intention to treat the services provided by each type of employee differently. Therefore services carried out by non-member employees are not essential, and their right to strike under section 23 of the Constitution should not be limited in any way.

In a unanimous judgment by Nkabinde J, the Constitutional Court interpreted the phrase ‘essential service’ restrictively, so as to avoid impermissibly limiting the fundamental right to strike as entrenched in section 23(2)(c) of the Constitution. The

Court held that the phrase cannot be interpreted in isolation, but that regard must be had to the purpose of the provisions of the LRA and the SAPS Act, and the context in which the phrase appears, so as to give effect to the right to strike. The Minister could designate non- member employees as members of the SAPS if he deemed them as such in terms of section 29 of the SAPS Act. The Court upheld the decision of the Labour Appeal Court and held that not all SAPS employees carry out an essential service.

The Court dismissed the appeal with no order as to costs.