



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 70/10
[2011] ZACC 20
Decided on 9 June 2011

Arnold Michael Stainbank v The South African Apartheid Museum at Freedom Park and Another

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 Thursday 9 June 2011, the Constitutional Court gave judgment in a case in which Mr Stainbank claimed that the High Court was biased against him. The applicant had in the High Court applied for an interdict aimed at preventing the taxing of a bill of costs made in a previous case.

The Constitutional Court considered two issues. The first was whether the judge had been biased resulting in the applicant having received an unfair hearing. The second whether the order requiring Mr Stainbank's attorney to pay costs out of his own pocket on the scale between attorney and own client if costs were not recovered from Mr Stainbank himself was wrong. Mr Stainbank relied for the bias claim on the fact that the High Court judge had, amongst other things, said that the applicant's attorney was lying, made certain remarks about the advocate having come from Durban and asked for argument on why Mr Stainbank's attorney should not pay the costs out of his own pocket. The first respondent argued that there was no bias and that the costs order was justified.

The Court, in a unanimous judgment by Khampepe J, held that although this case comes close to satisfying the reasonable apprehension of bias test it, in all the circumstances, fell just short of proof of bias in the light of the presumption of impartiality of judicial officers. The Court found that the costs order of the High Court was not justified. This was set aside and substituted with one that grants costs from the applicant's attorney's own pocket on a party and party scale. The appeal succeeded to this limited extent.