

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Beinash and another v Ernst & Young and others

Case CCT 12/98

Decided on 2 December 1998

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.

This case involved an application for leave to appeal against a decision of the Witwatersrand High Court which declared the applicants, including Mr Beinash, to be vexatious litigants in terms of a provision of the Vexatious Proceedings Act 3 of 1956. The applicants argued that the provision violated their right of access to court. They also challenged the way in which the order of the judge in the High Court was made, claiming that the judge misused his discretion in making the order against them. The application was dismissed by the Constitutional Court on the ground that there was no prospect that the appeal would succeed.

An order under the challenged provision may be made only after a judge has heard the parties' respective views and if he or she is satisfied that a person has persistently and without reasonable grounds instituted legal proceedings against one or more individuals. The effect of the order is that the vexatious litigant may not institute any legal proceedings in any court against any persons for an indefinite period without first obtaining permission from a court to institute the action.

The Constitutional Court found that the provision does limit a person's right of access to court. However, such limitation is reasonable and justifiable. While the right of access to court is important, other equally important purposes justify the limitation created by the Act. These purposes include the effective functioning of the courts, the administration of justice, and the interests of innocent parties subjected to vexatious litigation. Such purposes are served by ensuring that the courts are neither swamped by matters without any merit, nor abused in order to victimise other members of society.

The Court pointed out that the person against whom such an order has been made can still appeal the decision if the requirements for making the order are not met. It noted that the Act establishes a screening mechanism that does not prohibit but rather regulates a vexatious litigant's right of access. This regulation is appropriate in light of the fact that the vexatious litigant is someone who has abused the court process.

The Court also found that there was nothing to suggest that the judge of the High Court had erred in making the order against Mr Beinash, which seemed fully justified in the circumstances of the case. Accordingly the application was dismissed.

The judgment of the Court was delivered by Mokgoro J and was concurred in by the other members of the Court.