



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Horn and Others v LA Health and Another**

**CCT 97/14**

**Date of hearing: 11 November 2014**

**Date of judgment: 14 May 2015**

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### **MEDIA SUMMARY**

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*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.*

Today, the Constitutional Court handed down a judgment in an appeal against a decision of the Supreme Court of Appeal determining whether former employees are entitled to an additional redundancy or retrenchment benefit specified under the Pension Fund Rules of the Cape Joint Retirement Fund (Rules) and whether their right to a fair hearing was violated.

The appellants, represented by Mr Horn, are former employees (Employees) of the first respondent, LA Health Medical Scheme (LA Health), which provides medical aid to local authorities in the Western Cape, Northern Cape and Eastern Cape. LA Health transferred its administration division to Discovery Health (Pty) Ltd (Discovery), pursuant to which their employment with LA Health was terminated. The Employees initiated proceedings in the Western Cape Division of the High Court, Cape Town, in which they claimed payment of an additional redundancy or retrenchment benefit that was provided for in the Rules for employees of “local authorities”. The High Court found for the Employees. However, the Supreme Court of Appeal overturned the decision of the High Court, holding that the relevant rule cannot be construed as being applicable to LA Health, as it is not a “local authority” within the proper meaning of the term. The Employees were, therefore, not entitled to additional benefits under the Rules.

The Employees were granted leave to appeal to this Court on the basis of their contentions that the Supreme Court of Appeal erred in finding that LA Health was not obliged to pay them an additional benefit and had infringed their constitutional right to a fair hearing by failing to afford them an opportunity to dispute the version of the origin and development of the rule upon which the Court relied.

In a majority judgment penned by Nkabinde J (Cameron J, Froneman J, Khampepe J, Madlanga J, Tshiqi AJ and Van der Westhuizen J concurring), this Court found that the Supreme Court of Appeal had afforded the Employees multiple opportunities to make submissions regarding the origin and development of the relevant rule, and that their contentions to the contrary were baseless. Based on this reasoning, it found that the procedural ground alleged by the Employees had no merit. Accordingly, the facts and issues before this Court did not invoke its jurisdiction. The Court dismissed the appeal with costs.

In a separate judgment written by Zondo J (Mogoeng CJ and Leeuw AJ concurring), it was held that this matter required the interpretation and application of the Labour Relations Act (LRA). He accordingly held that this Court had jurisdiction in this matter. Zondo J took the view that the administrative division in which the Employees were employed by LA Health was transferred as a “going concern” (continuing operation) to Discovery. Zondo J found that a transfer of business as a going concern neither terminates employment contracts, nor is it a lawful reason for the termination of employment contracts. He held that the LRA creates a statutory dispensation in terms of which, when there is a transfer of business as a going concern, a change of the identity of the employer occurs without the termination of the employment contracts of the employees. In such a case, the employment contracts and all the rights and obligations existing between the business transferor and each employee prior to the transfer are retained.

Accordingly, Discovery took over the obligation that the Employees seek to enforce against LA Health, if it ever existed, under the terms of the LRA that govern the transfer of a business as a going concern. Therefore, the Employees sued the wrong party. In the result, Zondo J would also have dismissed the appeal, but he would not have made any costs order against the Employees as this was a labour matter.