

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Sibiya and Others v Director of Public Prosecutions (Witwatersrand Local Division) and Others

CCT 45/04

Supervision by Court commenced on	:	25 May 2005
Supervision completed on	:	28 July 2006
Final judgment on supervision delivered on	:	30 November 2006

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.

During 1995, this Court declared the death penalty unconstitutional in the case of *S v Makwanyane*. It also ordered that all sentences of death that had already been imposed but not yet carried out must be replaced by other punishment in terms of the law. Two years later Parliament passed laws by which these death sentences would be replaced by alternative punishment. This Court had to consider the constitutionality of that law in the first judgment delivered in this case on 25 May 2005.

In that first judgment the Court expressed dismay that, 10 years after the judgment in *S v Makwanyane*, the death sentences of 62 people had not been replaced. It made an extensive supervisory order concerning the replacement of outstanding death sentences with other punishment. That process of supervision was completed on 28 July this year. All the death sentences have now been replaced by other punishment and this Court, in a unanimous judgment written by Justice Yacoob, gives a short account of the process. Broadly, the process comprised reports being made to the Court by officials in the Ministry of Justice with this Court making orders after considering the reports.

The first report filed on 15 September 2005 provided detailed information about how far the process had gone and showed that the death sentences of 40 people had not yet been replaced. The Court made a further order on 7 October 2005 asking for further information and for a further report to be filed on or before 7 November 2005.

The second report filed on 7 November 2005 showed that the sentences of 28 people needed still to be replaced as at 31 October 2005. Further supervision was ordered on 30 November 2005 and a further report was required by 15 February 2006.

The third report which was timeously provided showed that there were 9 people whose sentences had to be substituted and a further order of supervision was made on 16 March 2006. This order anticipated that all the death sentences would have been replaced by 15 May 2006 and required the final report to be filed by that date. However this report showed that the death sentence of one person had not yet been substituted. On 1 June 2006 this Court made a further order of supervision. As has already been mentioned, the process was completed on 28 July 2006.

Members in the office of the Ministry of Justice and the Office of the President, the office of the Director of Public Prosecutions and all the courts involved contributed towards ensuring that the vexed issue of the substitution of death sentences by alternative appropriate sentences was brought to a conclusion. This Court is indebted to all those who were part of the process for their contribution. The Court appreciates in particular the fact that the orders made in *S v Makwanyane* have at last been fulfilled and that the unconstitutionality of the death penalty can now be said to have been realised in practice.