



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### *Mzoxolo Magidiwana and Other Injured and Arrested Persons and Others v President of the Republic of South Africa and Others*

CCT 100/13

**Date of Judgment: 19 August 2013**

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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 judgment in a matter connected to a deeply painful set of events in our recent history. During August 2012, a number of people were injured and killed during violence that arose out of events at the Marikana mine in Rustenburg. The President established a commission of inquiry (Commission) to investigate and report on the events surrounding this tragedy. The Commission commenced on 1 October 2012 and was expected to complete its work within five months. Its term was later extended to the end of October 2013.

The applicants are participants in the Commission's proceedings, representing the interests of persons who were killed or injured during, or arrested after, the tragedy. To cover their legal expenses, the applicants initially procured funding from a non-governmental entity. However, this was secured only for the first six months of the Commission's proceedings. The applicants sought further funding from the Minister of Justice and Constitutional Development as well as from Legal Aid South Africa. Both requests were denied.

The applicants then brought an urgent application before the North Gauteng High Court, Pretoria (High Court) for an interim order obliging temporary provision of legal aid at state expense, pending a full review of the State's obligations to provide legal aid.

The High Court dealt only with the application for urgent and temporary relief and dismissed the applicants' claim on the basis that it was constitutionally inappropriate for a court, in interim proceedings, to direct the Executive on how to expend public resources

in the absence of proof of unlawfulness, fraud or corruption. No fraud or corruption was claimed in this case.

The applicants sought leave to appeal directly and urgently to the Constitutional Court against the interim decision. Because the full review had not yet been undertaken, the Court was faced with a narrow issue: whether there was any legal basis for interfering with the High Court's interim ruling.

On this narrow issue, in the light of the public interest in the Commission's work and in the outcome of the matter, the Court considered the applicants' arguments on the state's failure to provide legal aid. Whilst the Court emphasised that it was not finally determining the merits of the matter, it held that the applicants were unable to show why the High Court's finding on unlawfulness should be overturned. The Court recognised that it may be commendable and fairer to the applicants that they be afforded legal representation at state expense, but that this alone is not a basis upon which to intervene.

Courts generally do not hear appeals against interim orders that have no final effect, particularly when an interim order concerns the manner in which public resources are spent and has implications on the separation of powers, as in this case. The Constitutional Court therefore dismissed the application for leave to appeal against the High Court's interim order. This should not be taken to mean that there are legal constraints that prevent the state from granting the legal aid the applicants seek if it is considered fair and lawful to do so.