

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Sibiya and Others
v The Director of Public Prosecutions (Johannesburg High Court) and Others
CCT 45/04

Decided on: 7 October 2005

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 25 May 2005 the Constitutional Court gave judgment upholding the constitutional validity of the provisions of certain legislation that provided for a process to replace all the death sentences that had been imposed before June 1995 with other appropriate punishments. The judgment raised concerns about the fact that the death sentences of 62 of a total of about 400 people who were on death row when the judgment declaring the death penalty unconstitutional in the case of *S v Makwanyane* was delivered more than ten years ago had not yet been substituted. The Court ordered the government to provide detailed information about the substitution of sentences and in respect of those people whose sentences have not yet been substituted, to give a full explanation as to why.

The report required by order of court was not filed timeously by 15 August 2005 but the Minister of Justice and Constitutional Development and the President of the country made an application for an extension of time to enable them to comply with the order. The Constitutional Court granted the application on 18 August 2005 and said that it would furnish it reasons later.

A detailed report and affidavit were filed on 15 September 2005. The judgment gave the reasons for the grant of the extension of time and evaluated the report and affidavit. In a unanimous judgment prepared by Yacoob J the Court came to the conclusion that it was in the interests of justice to grant the extension of time because the explanation given for a failure to provide the information and explanation on time was, on the whole, satisfactory, because those people who had not yet had their sentences replaced would not experience greater delay if the order was granted, because the government had every intention of complying with the order and because much work had been done towards compliance.

In evaluating the report and affidavit, Yacoob J pointed out that the death sentences of 40 people out of a total of 465 whose sentences had to be replaced as at the date of the judgment in *S v Makwanyane* had not yet been replaced. A broad explanation had been given for why this had not yet been done. Yacoob J also found that the order had not been fully complied with in relation to three people who were on death row at the relevant time.

The Constitutional Court therefore ordered: The second and third respondents are ordered to ensure that a report is filed in this Court on or before 7 November 2005:

- (a) on the progress made in the substitution process by 31 October 2005; and
- (b) complying with the terms of this Court's order dated 25 May 2005 in relation to Mr D N Bezuidenhout, Mr P L Kadiege and Mr B W Pule.