



CONSTITUTIONAL COURT OF SOUTH AFRICA

Brian Patrick De Lacy and Another v South African Post Office

**Case No: CCT 24/10
[2011] ZACC 17**

Date of Judgment: 24 May 2011

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 24 May 2011 the Constitutional Court handed down judgment in an application for direct access concerning allegations of bias made against certain judges of the Supreme Court of Appeal.

The applicants, Messrs De Lacy and Beadon, first instituted action in the South Gauteng High Court, Johannesburg claiming damages that, they alleged, had been caused by a fraudulent tender process conducted by the respondent, the South African Post Office. The applicants were partially successful in their claims in that court and were awarded damages in the amount of R60 million. Both the South African Post Office and the applicants were granted leave to appeal to the Supreme Court of Appeal. That Court set aside the award and held in favour of the Post Office.

In June 2009, the applicants brought an application for leave to appeal to the Constitutional Court based on the ground that the Supreme Court of Appeal had made incorrect findings of law on the requisite intent to defraud in claims for damages related to state tenders. The application was dismissed. Shortly thereafter, the applicants also approached the Judicial Services Commission with a complaint that by making adverse factual findings against them, the judges of the Supreme Court of Appeal concerned made themselves guilty of gross incompetence and gross misconduct. That complaint was dismissed, although the Judicial Services Commission did suggest that the applicants consider approaching this Court anew.

Nine months after having made that complaint the applicants lodged yet another application in this Court wherein they sought leave to appeal on the ground that the Supreme Court of Appeal had misdirected itself on the facts. That application was also dismissed.

In a third application to this Court, the applicants alleged that the Supreme Court of Appeal made 114 factual errors that were “specifically designed to favour the [Post Office] and prejudice” them. They accused the judges who heard their appeal of deliberate distortion of the facts and of actual bias.

A unanimous Court, in a judgment penned by Deputy Chief Justice Moseneke concluded that the application for direct access must fail. The Court found that the accusation of deliberate bias and judicial dishonesty and the complaint of apprehension of bias were without foundation and thus lacked any prospect of success. Not only did the applicants fail to establish close to 114 errors in the judgment of the Supreme Court of Appeal, they also failed to show that an error was made that would found a reasonable apprehension of bias.

The Court found that there were other considerations which led to the conclusion that it was not in the interests of justice to grant the application. These were that it was the applicants’ third approach to this Court, that their previous applications also amounted to discontent with the factual findings of the Supreme Court of Appeal, and that no adequate explanation for the delay in bringing the current application had been furnished. The applicants neither explained why they had not raised the specific contentions on which they now relied, nor why they withdrew the serious allegations of deliberate bias and judicial dishonesty made against the judges of the Supreme Court of Appeal a mere two days before the hearing.

The Court dismissed the application and ordered the applicants to pay costs on a punitive scale. While the Court declined an invitation to order the applicants’ legal representatives to pay costs out of their own pockets, it directed its registrar to furnish a copy of the judgment to their respective professional bodies in order to consider whether their conduct merits an enquiry.