



CONSTITUTIONAL COURT OF SOUTH AFRICA

Netherburn Engineering CC t/a Netherburn Ceramics v Mudau and Others

CCT 01/09
[2009] ZACC 10

Date of Judgment: 1 April 2009

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 26 October 1998, the applicant in this matter, Netherburn Engineering CC, dismissed the third respondent, Ms Moabelo, for misconduct. Ms Moabelo then referred the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) alleging that the dismissal was unfair. At the CCMA hearing, the commissioner (the first respondent in this matter, Mr Mudau) refused, in terms of section 140(1) of the Labour Relations Act 66 of 1995, to allow Netherburn to be represented by an attorney. The commissioner ultimately found that Ms Moabelo had been unfairly dismissed and ordered reinstatement and compensation.

Netherburn sought to review and set aside the CCMA award in the Labour Court on the ground, amongst others, that the commissioner had misdirected himself in refusing to allow Netherburn to be legally represented. Although that Court ultimately set aside the award on another ground, it held that the commissioner had not misdirected himself in refusing legal representation, and that the applicant did not, in the circumstances, have a constitutional right to legal representation. The applicant took this point on appeal to the Labour Appeal Court, where both the majority and the minority judgments found against the applicant.

The applicant then sought leave to appeal to the Constitutional Court. On 1 April 2009, the Court handed down a unanimous judgment dismissing the application. The Court held that, although section 140(1) of the Labour Relations Act raises a constitutional question, it was not in the interests of justice to hear the matter. This was so because section 140 was repealed nearly seven years ago, and because there appears no longer to be a live dispute between the parties – thus, any findings the Court could make in respect of that section would apparently have no practical effect. The Court thus concluded that it was not an appropriate case to determine questions relating to the right to be legally represented in the CCMA.

In the result, the application for leave to appeal was dismissed.