



CONSTITUTIONAL COURT OF SOUTH AFRICA

Tatiana Malachi v Cape Dance Academy International (Pty) Ltd and Others

**Case No: CCT 05/10
[2010] ZACC 13**

Decided on: 24 August 2010

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 Tuesday 24 August 2010, the Constitutional Court delivered a judgment confirming an order of constitutionality invalidity made by the Western Cape High Court, Cape Town (High Court). The High Court had declared the procedure of arrest *tanquam suspectus de fuga* in terms of section 30(1) and (3) (the impugned provisions) of the Magistrates' Courts Act, 1944 unconstitutional and invalid.

The procedure empowers a magistrate to make an order for the arrest and detention of an alleged debtor at the instance of a creditor who is owed R40 or more and reasonably suspects that the debtor is about to flee the country to avoid the adjudication of the dispute.

The applicant is Tatiana Malachi, a citizen of the Republic of Moldova. She was recruited by Cape Dance Academy International (Pty) Ltd and Rasputin Properties (Pty) Ltd (the employers) from Moldova to work for them as an exotic dancer.

After a few months of work, the applicant made plans to return to Moldova. Her employers alleged that she owed them money but the applicant lacked the means to pay. They then applied for, and were granted, an order by the Magistrates' Court to have the applicant arrested in terms of the impugned provisions, pending the finalisation of their claim against her. She was arrested and detained at Pollsmoor Correctional Centre for 16 days. In pursuit of her liberty, the applicant approached the High Court for an order declaring the impugned provisions constitutionally invalid. The High Court granted an

order declaring these provisions inconsistent with the Constitution, and referred it to this Court for confirmation.

Writing for a unanimous Court, Mogoeng J held that the arrest of a person in terms of the impugned provisions was without “just cause”, because, amongst other things: (i) the arrest does not necessarily render the debt any more executable than would have been the case had the debtor left the country; (ii) the impugned provisions severely curtailed the applicant’s fundamental right to freedom; (iii) the degrading effect of incarceration could not be undone if it is determined that the money is not owed; (iv) it is inconceivable that imprisonment of a person can ever be justified where liability has not been established, bearing in mind that imprisonment for non-payment of an established debt is unconstitutional; and (v) the amount of R40 was minimal.

Mogoeng J held that these provisions were not reasonable or justifiable in an open and democratic society based on human dignity, equality and freedom. The order of constitutional invalidity made by the High Court was accordingly confirmed insofar as it related to the impugned provisions.