

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Phineas Lekolwane and Another v The Minister of Justice and Constitutional Development

Case CCT 47/05

Hearing Date: 22 August 2006

MEDIA SUMMARY

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

The first and second applicants and their three children had been placed under protective custody in terms of the National Witness Protection Programme. The applicants applied to this Court for an order declaring regulation 22 under the Witness Protection Act 112 of 1998, dealing with the daily financial allowance allocated to persons under protective custody, to be unconstitutional.

The applicants lodged two applications in this Court: one for leave to appeal; and another for direct access. The application for direct access was dismissed on the basis that it was not in the interests of justice for the issues raised to be determined by this Court as the court of first and final instance. When the application for leave to appeal was heard on 22 August 2006, an application for condonation and postponement by the applicants was refused and the application was struck off the roll. This judgment provides reasons for the Court's decision to remove the matter from the roll and does not deal with the merits of the application.

The application for leave to appeal was initially enrolled for hearing in this Court on 9 March 2006 and counsel had been appointed to act pro bono on behalf of the applicants. On the day of the hearing, the first applicant submitted that he had not been consulted by his appointed legal representatives and was unhappy with the contents of the argument filed by them. The Chief Justice ordered a brief adjournment, so that the first applicant and his legal representatives could consult and the argument advanced on his behalf could be explained to him. The first applicant was not satisfied and as a result the case was finally postponed by this Court until 22 August 2006. On 21 August 2006, however, an application for condonation was filed with this Court for not having filed additional heads of argument by 30 March 2006 and for an extension of time in which to do so. The applicants also sought a postponement of the hearing.

The Court found that the applicants and their legal representatives had taken a careless and lackadaisical approach and emphasised that the postponement of a matter cannot be claimed as a right. To grant a further postponement in this case would have constituted an abuse of the processes of this Court, particularly in light of the fact that a previous postponement had already been granted and the applicants were expressly warned that it was a final one. As such, it could not be considered in the interests of justice to grant the application. While striking the matter off the roll, the Court made no order as to costs. A party who may wish to approach this Court afresh will be required to show good cause and give a full explanation as to why their application should be enrolled, in view of its history.