



CONSTITUTIONAL COURT OF SOUTH AFRICA

Food and Allied Workers Union v Ngcobo N.O. and Another

Case CCT 50/13

Date of hearing: 29 August 2013

Date of judgment: 9 October 2013

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.

Today the Constitutional Court dismissed an application by the Food and Allied Workers Union (Union) for leave to appeal against a judgment of the Supreme Court of Appeal.

The Union undertook to pursue employees' claims in an unfair dismissal dispute against their former employer Nestlé, in the Labour Court, but it never did. After the statutory deadline passed, the Union gave a further undertaking to the employees to revive their unfair dismissal claims by applying for condonation. It did not make this application either. Nineteen months after their claims had lapsed the Union told the employees that it would no longer proceed, as it was of the opinion that there were no prospects of success. It was for these breaches that both the High Court and the Supreme Court of Appeal held the Union liable to the employees.

Before this Court the Union argued that, in the light of its constitutional right to determine its own administration, programmes and activities, as well as the provision in its internal constitution that it may "provide legal assistance to members ... where it deems it in the interest of the Union to do so", it was entitled to withdraw legal assistance from its members with impunity. The Union also argued that it was excused from liability, because the employees could still apply for condonation themselves.

In a unanimous judgment written by Cameron J, the Constitutional Court held that leave to appeal should be refused because the Union's appeal had no prospects of success. Even on the most favourable interpretation of the Union's constitution, the Union was not entitled to withdraw from its undertaking to provide legal assistance. It is bound to perform according to its contracts and can be held liable for breach of those contracts.

The Constitutional Court therefore dismissed the application for leave to appeal with costs.