CONSTITUTIONAL COURT OF SOUTH AFRICA

Mqabukeni Chonco and 383 Others v President of the Republic of South Africa

CCT 94/09
[2010] ZACC 7

Date of Judgment: 16 March 2010

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.

Mr Chonco and 383 other applicants approached this Court seeking an order declaring that the President had unreasonably delayed in considering and deciding their applications for Presidential pardon in terms of section 84(2)(j) of the Constitution. The applications had been filed with the Department of Justice and Constitutional Development in 2003. The applicants also sought an order directing the President to decide their applications within one month from the date of the order. Thus, the matter was, in essence, a sequel to *Minister for Justice and Constitutional Development v Chonco and 383 Others* [2009] ZACC 25, CCT 42/09, 30 September 2009 (*Chonco 1*).

On 4 February 2010, the day of the hearing, counsel for the President handed in a supplementary affidavit in which the President stated that he had considered all 384 applications for pardon. The President disclosed that he had decided to reject 230 of these applications. He stated that decisions in respect of the remaining 146 applications (in which the applicants concerned had either elected to apply for pardon under the special dispensation process or whose circumstances were closely related) had been deferred until this Court's judgment in *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4, CCT 54/09, then pending, but subsequently handed down on 23 February 2010, had been delivered. Consequent to the President's supplementary affidavit, the applicants informed the Court that they would no longer persist in seeking the relief sought as same had been substantially obtained. The parties indicated, however, that they wished to argue the issue of costs. The applicants sought costs against the President. The President submitted that each party should bear its own costs. The judgment in this matter therefore deals only with the question of costs.

In a unanimous judgment, Khampepe J held that the enquiry into what would be a just and equitable costs order included a determination of the reasonableness of the conduct of the parties in relation to the proceedings. The Court held that on consideration of the facts, the applicants had acted unreasonably in lodging the application in this Court less than a month after the judgment in *Chonco 1* had been delivered without first enquiring from the President as to how he intended to attend to the processing of the applications. It was also held that it was unreasonable for the applicants to have proceeded with the litigation after the President lodged an answering affidavit in which he undertook to process the applications by the end of January 2010.

Khampepe J noted that while the Court did not wish to deprive the litigants of a weapon to use in vindication of their rights, it was difficult, in the circumstances, not to conclude that the institution of the proceedings was hasty. She noted further that the applicants should have, at the very least, put the President on terms before resorting to litigation. Khampepe J also noted that the proper administration of justice demanded that such precaution be taken by litigants before embarking upon litigation in this Court.

In addition, Khampepe J held that the costs awarded to the applicants in *Chonco 1*, even though they were unsuccessful on the merits, had indemnified them from the expense of the litigation. The costs order was an expression of the Court's displeasure at the conduct of the Presidency. Therefore, Khampepe J concluded that it would not be just and equitable to grant the applicants costs which dealt with the very same delay.

In the result, no order on the merits was made. Each party was ordered to pay its own costs.