

---

Explanatory Note

---

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

The case concerns the adoption of a little boy whose parents never married. Mr Fraser, the father, wanted to retain his status as parent and to have contact with his child. However, the law as it then stood was against him. As the unmarried father of the child his consent to the adoption was not required. Only that of Ms Naude, the mother of the child, was necessary.

The adoption proceedings were brought by the adoptive parents and dealt with by the Children's Court in Pretoria North. Mr Fraser opposed the adoption and applied to adopt the child himself. Ms Naude refused consent to his adopting the child and consented to the child being adopted by the adoptive parents. They were found suitable by the Children's Court to be entrusted with the custody of the child.

Mr Fraser successfully applied to the High Court to have the adoption order set aside on the grounds that he was not given a fair hearing by the Children's Court. That decision was however reversed on appeal to the Supreme Court of Appeal.

Mr Fraser then applied to the Constitutional Court for special leave to appeal against the decision of the Supreme Court of Appeal, alternatively for direct access to the Constitutional Court, to have the adoption order set aside. Such leave is only given when it is in the interest of justice to do so.

Almost three years have elapsed since the adoption order was made. Throughout that period the child has lived with the adoptive parents and has had no contact with Mr Fraser.

In a unanimous judgment, the President of the Constitutional Court, Justice Chaskalson, held that the best interests of the child had to be taken into consideration. He found that the continued uncertainty as to the status and placing of the child and further prolonged litigation on that issue could not be in the interest of the child. Instead it was in the interest of justice that the matter be brought to an end.

The application for special leave to appeal, alternatively for direct access to the Constitutional Court, was accordingly refused.

23 September 1998