



CONSTITUTIONAL COURT OF SOUTH AFRICA

Vuyile Jackson Gcaba versus Minister for Safety and Security and Others

**CCT 64/08
[2009] ZACC 26**

Date of Judgment: 7 October 2009

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.

This application for leave to appeal against a judgment of the Eastern Cape High Court, Grahamstown (High Court) was heard by the Constitutional Court on 7 May 2009. It deals with the jurisdiction of the High Court and the Labour Court over labour-related matters, as well as with the question whether the conduct of a public sector employer towards an employee amounts to administrative action.

Previous decisions of this Court, as well as the preceding jurisprudence of the Supreme Court of Appeal and other courts, have resulted in differences of opinion in subsequent judgments on the jurisdiction of the High Court and the Labour Court, especially with regard to disputes between public sector employees and their employers. This judgment is the most recent authority on the proper interpretation of the relevant provisions of the Constitution, the Labour Relations Act, 1995 (LRA) and the Promotion of Administrative Justice Act, 2000 (PAJA).

The applicant, Mr Gcaba, held the position of station commissioner, Grahamstown, in the South African Police Service (SAPS). When the position was upgraded, he applied, was shortlisted and went through the interview process, but he was not appointed. Dissatisfied, he lodged a grievance with SAPS, but later abandoned the internal process and elected to refer the dispute to the Safety and Security Sectoral Bargaining Council (Bargaining Council). After the failure of the representative of SAPS to attend the pre-arbitration meeting, he withdrew the dispute from the Bargaining Council and approached the High Court to review the decision of the National and Provincial Commissioners of SAPS not to promote and appoint him as station commissioner, a decision which he regarded as administrative action.

The High Court held that it lacked jurisdiction to entertain the labour-related dispute. The High Court dismissed Mr Gcaba's application.

This Court unanimously holds that the same conduct may threaten different rights and give rise to different causes of action in law, often to be pursued in different courts. The constitutional and legal order is one coherent system for the protection of rights. Legislation must not be interpreted to exclude or unduly limit rights. However, when the Constitution itself recognises rights in different specific areas of law, and mandates the legislature to specifically create tailor-made rules and structures for those areas, these have to be utilised.

Generally, employment and labour relationship issues do not amount to administrative action. This is implicit in the recognition by the Constitution of the distinct rights to fair labour practices in section 23, which regulates the employment relationship between employer and employee, and just administrative action in section 33, which deals with the relationship between the bureaucracy and citizens. When the conduct of the state as employer has no direct consequences for other citizens, it will not amount to administrative action. The failure to promote and appoint Mr Gcaba was not administrative action. If his case were heard by the High Court, he would have failed for not being able to make out a case for the relief he sought, namely review of an administrative decision.

The Court emphasised the special dispute resolution mechanisms created by the LRA and held that, in terms of section 157(1) of the LRA, the Labour Court has exclusive jurisdiction over matters that the LRA prescribes should be determined by it. The provision should be given content to protect the special status of the Labour Court. Further, section 157(2), which confirms the concurrent jurisdiction of the Labour Court and High Court in the circumstances prescribed therein, should not be read to permit the High Court to have jurisdiction over those matters which fall within the exclusive purview of the Labour Court.

The LRA does not intend to destroy causes of action in respect of matters which may well be heard by the High Court, held the Court, and it should not be interpreted to do so. Where a remedy lies in the High Court, section 157(2) should not be read to mean that it no longer lies there. Constitutional rights may always be enforced in the High Court.

Jurisdiction has to be assessed on the basis of the pleadings, not the substantive merits of a case. If the pleadings assert a claim under the LRA, which is to be determined by the Labour Court, the High Court would lack jurisdiction. An applicant like Mr Gcaba who is unable to sustain a cause of action founded on administrative action that is cognisable by the High Court, should thus approach the Labour Court.

The application for leave to appeal is therefore granted, but the appeal is dismissed.