



CONSTITUTIONAL COURT OF SOUTH AFRICA

Van Wyk v Unitas Hospital

**Case CCT 12/07
Medium Neutral Citation [2007] ZACC 24**

Date of Judgment: 6 December 2007

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.

Today the Constitutional Court handed down judgment on an application by Ms Van Wyk applied for leave to appeal against a decision of the Supreme Court of Appeal. Ms Van Wyk had initially approached the Johannesburg High Court seeking an order directing Unitas Hospital to make available to her a report relating to the nursing conditions at the hospital. Ms Van Wyk's husband had died while he was a patient at the hospital. She believed that the report could help her to establish negligence on the part of the hospital staff. The High Court ordered the hospital to release the report to Ms Van Wyk under the provisions of the Promotion of Access to Information Act, 2000.

On appeal, the Supreme Court of Appeal held that Ms Van Wyk was not entitled to the report. She therefore approached the Constitutional Court for an order directing the hospital to release the report to her.

However the application to the Constitutional Court was made eleven months after decision of the Supreme Court of Appeal. By the time she approached the Constitutional Court, Ms Van Wyk had already issued summons against the hospital and the civil trial was due to start in March. In addition the report had been made available to her under the Rules relating to the production of documents to be used at trial. Her explanation for the delay was that throughout the period of eleven months she was considering whether to appeal the decision of the Supreme Court of Appeal. In addition she alleged that she did not have sufficient funds.

The Constitutional Court held that she had not provided a reasonable explanation for the delay. It held that after an inordinate delay, a litigant is entitled to assume that the losing party has accepted the finality of the order. The Court concluded that to grant condonation would undermine the principle of finality and not be in the interests of justice.

The Court however emphasised that in reaching its conclusion it had not expressed a view on whether Ms Van Wyk would have succeeded in her appeal. Apart from the length of the delay and the absence of reasonable explanation, the Court was also influenced by the fact that the report that Ms Van Wyk sought had been made available to her.