



CONSTITUTIONAL COURT OF SOUTH AFRICA

Tebeila Institute of Leadership, Education, Governance and Training v Limpopo College of Nursing and Another

CCT 155/14

Date of judgment: 26 February 2015

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 handed down a judgment re-emphasising its approach to costs in cases involving constitutional rights.

The Limpopo College of Nursing required prospective students to have obtained a school leaving certificate no more than three years prior to applying for admission to the College. The Tebeila Institute of Leadership, Education, Governance and Training (Tebeila) successfully challenged that admissions policy. The Limpopo Local Division of the High Court, Polokwane, found that this policy violated the right to equality and found it constitutionally invalid. However, the High Court inadvertently deprived Tebeila of the costs it incurred in challenging the policy. The Court ruled that each party should pay its own costs. That left Tebeila, though successful in its constitutional claim against a state institution, liable for all the costs it had incurred.

In granting Tebeila direct access to appeal against the adverse costs order, the Constitutional Court noted that appellate courts are generally very reluctant to interfere with the exercise of discretion in relation to cost awards. This is especially so when the only issue on appeal is that of costs. It was clear however that the High Court had misdirected itself in not granting Tebeila its costs. The Constitutional Court took the opportunity to affirm the general rule in constitutional litigation between a private party and the state (set out in *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14) that if the private party is successful, the state pays its costs, while if unsuccessful, each party pays its own costs. This case serves as a reminder to judicial

officers handing down costs orders that in these types of cases successful litigants should be awarded costs unless there are carefully articulated and convincing reasons not to.

This Court found this case exceptional because it was the first time it was confronted with a litigant who had successfully vindicated constitutional rights but was deprived of its costs. As a result, this Court set aside the High Court's cost order and directed the state respondents to pay Tebeila's costs in the High Court. In addition, as a matter of course, the state respondents (who opposed the appeal) were ordered to pay Tebeila's costs in the Constitutional Court as well.