

Explanatory Note

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*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 arose from the utterance of an allegedly defamatory statement by an East London City councillor during a Council committee meeting. The Supreme Court found in favour of the defendant, taking into account, amongst other factors, the defendant's right to freedom of expression in terms of s 15 of the Constitution. The plaintiff applied for leave to appeal to the Constitutional Court.

The Constitutional Court dismissed the application, ruling that the proper court to hear the appeal was the Appellate Division. The Court held that in light of its judgment in *Du Plessis v De Klerk* CCT 8/95 (15 May 1996), the indirect implementation of Chapter 3 rights in the application and development of the common law was the responsibility of the Supreme Court. It followed that any appeal from a decision of the Supreme Court involving the application and development of the common law in accordance with the spirit, purport and objects of Chapter 3, lies to the Appellate Division and not to the Constitutional Court. If there are both constitutional and non-constitutional issues on appeal, and it is necessary for the disposition of the appeal, the Appellate Division, having dealt with the non-constitutional issue, should refer the constitutional issue to the Constitutional Court for its decision.

The decision of the Court was delivered by Kentridge AJ and was concurred in by the other members of the Court.