



## IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Johncom Media Investments Ltd v M and Others**

**CCT 08/08**

**Medium Neutral Citation: ZACC 5**

**Date of judgment: 17 March 2009**

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### **MEDIA SUMMARY**

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*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.*

On Thursday 8 May 2008 the Constitutional Court heard an application for the confirmation of an order of constitutional invalidity made by the High Court in Johannesburg in respect of section 12 of the Divorce Act 70 of 1979. This provision relates to the publication of information that comes to light during a divorce action.

The application was made by Johncom Media Investments Ltd, owners of *The Sunday Times* newspaper. Johncom's application in the High Court was precipitated by an interim interdict issued by the same court, restraining it from publishing a report extracted from facts contained in the pleadings of a civil case pending in that Court.

The report the newspaper wanted to publish related to an action instituted by a man against his former wife for the payment of the sum of R1 009 847,51 as damages and restoration of certain benefits paid to her as a result of a settlement agreement reached in their divorce proceedings. The action was based on the allegation that she had deliberately misrepresented that one of the children born during their marriage was his biological son, knowing this to be false. As a result of the alleged misrepresentation, the man had suffered damage in the amount claimed. He also sought a rescission of part of the divorce order and a declaration that the child was not his.

Jafta AJ, writing for a unanimous court, found that the prohibition contained in section 12 prohibits publication of any information which comes to light during a divorce action or any related proceedings, regardless of whether the publication will infringe the rights of the divorcing parties and the interests of their children. It therefore infringes section 16 of the Constitution, which confers upon everyone the right to freedom of expression.

Jafta AJ held that section 12 does not fall within any of the exceptions listed in section 16 (2) of the Constitution. In addition, none of the parties contended that the limitation is reasonable and justifiable in terms of section 36 of the Constitution. The Court found that the purpose of protecting the rights of divorcing parties and their children could be achieved by less restrictive means. The limitation could thus not be justified.

This Court therefore confirmed the High Court's order of invalidity declaring section 12 of the Divorce Act unconstitutional and invalid. Jafta AJ also ordered that, subject to authorisation granted by a court in exceptional circumstances, the publication of the identity of, and any information that may reveal the identity of, any party or child in any divorce proceeding before any court is prohibited. Failure to comply with this order will amount to contempt of court.