



CONSTITUTIONAL COURT OF SOUTH AFRICA

Phumla Ruth Patricia Ngewu and Another v Post Office Retirement Fund and Others

Case No: CCT 117/11

Date of hearing: 07 February 2013

Date of Judgment: 07 March 2013

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.

On 7 March 2013 the Constitutional Court upheld an application for direct access brought by Phumla Ruth Patricia Ngewu (Ms Ngewu) and the Women's Legal Centre Trust.

Until 27 July 2007, Ms Ngewu was married to the fifth respondent, Mr Mawethu Ngewu (Mr Ngewu), who is employed by the Post Office and is a member of the first respondent, the Post Office Retirement Fund (Fund). According to their divorce decree, Ms Ngewu was awarded a 50% share of Mr Ngewu's pension interest. However, under the Rules of the Fund, Ms Ngewu's portion of her ex-husband's pension interest does not accrue upon divorce, and is only payable when Mr Ngewu terminates his membership in the Fund. Ms Ngewu seeks to change the Rules of the Fund so that her pension interest, and those of other ex-spouses in a similar position, accrues on the date of divorce.

All parties agreed that the Post Office Act was unconstitutional to the extent that it did not provide for the payment of the pension interest at the time of divorce. At the hearing, the legal representatives of the parties informed the Court that they had reached agreement and submitted a proposed order to the Court.

The Court found the section of the Post Office Act, which deals with the administrative and financial matters of the Fund, is unconstitutional. This is because of the differentiation between the payment of divorced spouses' pension interests regulated by the Pension Funds Act and the Government Employees Pension Law Amendment Act on one hand, as opposed to the payment of divorced spouses' pension interests governed by

the Post Office Act on the other. The differentiation violates the requirement of equality before the law and equal protection and benefit of the law contained in section 9(1) of the Constitution.

Therefore the Court declared the sections invalid. The declaration of invalidity is suspended for eight months for the legislature to cure the defect. If the unconstitutionality is not remedied within this period, section 24A of the Government Employees Pension Law will be read into the Post Office Act.