



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mohuba v University of Limpopo (730/2022) [2023] ZASCA 139

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Limpopo Division of the High Court, Polokwane (high court), and replaced the order of the high court with one remitting the matter to the high court for trial.

The appellant was an employee of the University of Limpopo (university) who applied, and was approved, for enrolment for a doctoral degree. The appellant was recommended for the award of his degree, but concerns were raised that certain statutory requirements relating to the duration of his study were not complied with. After an investigation by an independent panel constituted by the university, the decision was taken not to award the degree. In addition, his registration as a doctoral student was terminated. Aggrieved by the university's decisions, the appellant instituted action against the university, claiming specific performance of the contract entered into by him and the university, for an order directing the university to confer the degree on him. He claimed that, upon acceptance of his application, a tacit contractual agreement was concluded that the degree would be conferred upon him after complying with the stipulated requirements. He held that all the requirements were complied with and the university was in breach. In turn, the university held that the appellant's claim for specific performance of the contract was incompetent. It contended that its decisions constituted administrative action and that the appellant should have applied for review to set the decision aside. Additionally, the university sought to justify the non-conferral of the degree on section 65B of the Higher Education Act 101 of 1997 and the university's rules relating to admission and registration.

The high court accepted that there was a contractual relationship between the university and the appellant and that the remedy of specific performance could be available if breach or repudiation of the contract by the university was established. However, it refused to grant the specific performance on the ground that the appellant was no longer a student after the university had cancelled his registration, because the Act, in particular s 65B, and the university rules required that a person ought to have been registered as a student at the time the degree was conferred and that the statutory provisions precluded the university from conferring a degree when registration had been cancelled.

Before this Court, the appellant submitted that the termination of his registration should not have been considered an administrative action, rather a form of repudiation of the contract. He argued that the high court erred when it refused to grant an order of specific performance on the grounds that it would have been unlawful to award the degree when he was no longer enrolled as a student. The high court considered the relationship between the university and the appellant as one of contract but it upheld the special plea in which the university had contended that the relationship between it and the appellant was entirely one of public law. The SCA found that such reasoning could not be supported because if the relationship between the university and the appellant was to be understood as one of contract, the special plea should have been dismissed in which event the high court should have proceeded to consider whether the appellant was entitled to specific performance. This Court maintained that, as a party who was seeking specific performance, the onus was on the appellant to allege and prove the terms of the contract and compliance with any antecedent or reciprocal obligation. If the appellant could not prove the contract or compliance with its terms, his claim for specific performance had to fail. If on the other hand, the court was satisfied that the appellant had established the terms of the contract, that he had complied with any antecedent obligation, including statutory requirements, and that the university had repudiated the contract, it had to grant specific performance unless there existed factors which justified the refusal of the remedy.

This Court found that the order of the high court upholding the special plea and dismissing the appellant's claim could not stand. It held that the procedure of the special plea was not an appropriate procedure to resolve the questions raised by the university; the high court should have allowed the question raised by the special plea to stand over for decision by the high court, as it appears that the question is interwoven with the evidence that will be led. The SCA emphasised that the relationship between a student and the university is not straightforward. It cannot be characterised as one that is to be understood as one that is either entirely of private or public law nature. In this matter, it meant that the appellant's case should have been left for determination at the trial after all evidence has been led. This Court found that an award of a separation order was inappropriate and the matter ought to have been remitted to the high court.

In the result, the appeal was upheld and the order of the high court replaced with one remitting the matter to the high court for trial.

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