



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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***Minister of Justice and Constitutional Development and Others v Ntuli
(Judicial Inspectorate for Correctional services intervening as amicus curiae)
(539/2022) [2023] ZASCA 146 (8 NOVEMBER 2023)***

Today, the Supreme Court of Appeal (SCA) dismissed, in part, an appeal from the Gauteng Division of the High Court, Johannesburg (high court). The appeal concerned the rights of prisoners to further education. The respondent (Mr Ntuli), a prisoner was enrolled in a computer studies course with a focus on data processing. He sought to use a personal computer in his cell for study purposes, but his request was rejected, as it conflicted with the departmental 'Policy Procedure Directorate Formal Education Programmes' (the policy). Mr Ntuli challenged the policy in the high court. The high court found that the policy infringed the constitutional right to further education in terms of s 29(1)(b) of the Constitution and also constituted unfair discrimination. The appellants appealed to the SCA.

The SCA examined the policy and its objective and noted that the policy permits a prisoner to use a personal computer for their studies, but only in a designated room and during certain specified times. The policy however excludes the use by a prisoner of their personal computer for study purposes in their cell. The policy was challenged on two grounds: the first being that it amounted to unfair discrimination in terms of the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act); and secondly, that it infringed the constitutional right to further education.

With regards to the first challenge, the SCA found that the judge of the high court who heard the matter was not designated as a judge of the Equality Court. The high court thus did not enjoy jurisdiction to make an order in terms of the Equality Act. The order of the high court declaring the policy to constitute unfair discrimination was accordingly set aside.

As to the second challenge, the SCA found that the right to further education is, at a minimum, a right to pursue further education, free of state interference. Mr Ntuli was prevented from effectively pursuing his chosen course of study. The policy was therefore found to infringe his right to further education.

The SCA examined the blanket exclusion set out in the policy as well as the justifications proffered by the appellants, namely that sufficient access was provided during the hours set out in the policy and that security concerns militated against allowing electronic devices in cells. However, the SCA was of the view that these justifications were insufficient to warrant limiting Mr Ntuli's fundamental rights. The SCA found that the blanket prohibition of the policy could not stand and were set aside. The appellants were ordered to reformulate the policy within 12 months in order to ensure its compliance with the constitutional right of prisoners to pursue further education.

In the result, the SCA upheld, in part, the order of the high court and declared that the policy prohibiting the use of personal computers in cells was invalid and set it aside. The appellants were ordered to, in consultation with the Judicial Inspectorate for Correctional Services, prepare and promulgate a revised policy for correctional services, permitting the use of personal computers by prisoners in their cells for study purposes, under certain conditions. In the interim, the SCA ordered that prisoners, on stipulated conditions, must be permitted access to their personal computers in their cells to pursue further education courses.

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