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

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Joyce Seaberry Britton v Minister of Justice and Correctional Services & Others (548/2023) [2024] ZASCA 148 (31 October 2024)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Western Cape Division of the High Court (high court). It ordered that the appeal be dismissed with costs including the costs of two counsel, where so employed.

The charges against Ms Britton date from the period 1999-2002. Ms Britton was employed by the Department of Children and Family Services to provide legal services to the State of Illinois for which she received approximately $4,1 million, which was based on fraudulent billing. She was disbarred by the Supreme Court of Illinois and charged with various counts of theft and tax evasion. Thereafter she fled to South Africa.

Ms Britton first learnt in 2007 that the authorities in the United States of America (USA) were intent on seeking her extradition. On 4 February 2009 she appeared in the Cape Town Magistrates Court for the purposes of holding an inquiry in terms of the Extradition Act 67 OF 1962 (the Act). She successfully challenged the lawfulness of those extradition proceedings in the high court. Unknown to Ms Britton, the USA government also sent through another request for her extradition in 2011. Approximately eight years later, in October 2017 she was advised by a member of the South African Police Services that, another request had been received for her extradition. It is these extradition proceedings that are the subject of this appeal.

The current extradition process commenced on 27 February 2017 and on 20 June 2017. The Minister of Justice and Correctional Services (the Minister) issued a notice for her extradition in terms of s 5(1) of the Act. On 18 July 2017 the magistrate issued a warrant for her arrest in terms of the s 5(1)*(a)* of the Act. She was subsequently arrested on 12 October 2017 and immediately released on bail.

In 2018 Ms Britton launched proceedings in the high court claiming that the notification received to surrender her to the US and her arrest be declared inconsistent with the Constitution and invalid. By this time, the primary issue for determination was whether Ms Britton was entitled to relief consequent upon *Smit v Minister of Justice and Correctional Services* (*Smit*) which had been delivered on 18 December 2020. In *Smit* the majority held that s 5(1)(a) of the Act was unconstitutional as it did not afford the magistrate any discretion to act as an independent arbiter. Instead, the magistrate was obliged to issue a warrant once notification was recieved from the Minister, a member of the executive. The Constitutional Court declared that the order of invalidity would be applicable from the date of the judgment. The high court rejected the argument that despite its prospectivity, the order was applicable to Ms Britton and dismissed her application. It granted leave to appeal to this Court.

The SCA noted that, Ms Britton's challenge to the notice of extradition and warrant of arrest crystallised into two points, namely the retrospectivity of *Smit* and what was described by Ms Britton's counsel as the 'rubberstamping' argument. Counsel for Ms Britton argued that the magistrate failed to apply his mind to the draft order and merely signed it. The basis of this was that the warrant of arrest contained

several errors. The SCA however failed to find any evidence in support of this argument and dismissed it.

With regards to the second point, namely the retrospectivity, the SCA had to determine whether the *Smit* order of invalidity applied to the arrest of Ms Britton, although her arrest was prior to that date. The SCA held that, the supremacy clause in the Constitution automatically renders any unconstitutional law invalid ab initio. While there are sound reasons of policy not to make an order of invalidity applicable to cases that have been determined under an invalid law, the same is not ordinarily true in respect of pending cases.

The SCA held that there is little reason to resolve pending cases on the basis of a law that has finally been declared to be invalid. That is usually what the interests of justice require, and it is what the Constitutional Court has ordered in a number of its decisions. However, it did not do so in *Smit*. While Ms Britton might be deserving of the benefit of the declaration of invalidity given by the Constitutional Court, since the Constitutional Court rendered such invalidity prospective, the warrant of arrest that was issued in respect of Ms Britton in terms of s 5(1)*(a)* should be treated as valid. Any different order is beyond the remit of revision of this Court.

As a result, the SCA dismissed the appeal. It ordered that the appeal be dismissed with costs including the costs of two counsel, where so employed.

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