

THE STATE V RUSSEL MAMABOLO
CASE CCT 44/00

MEDIA SUMMARY

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the court.

This case concerns the constitutional validity of the conviction and sentence of the appellant, Mr Mamabolo, a spokesperson for the Department of Correctional Services for the offence of scandalising the court. A high court judge granted a prisoner, Mr Eugene Terre Blanche, bail but the appellant issued a statement to the effect that bail had been wrongly granted and that the prisoner would not be released. The judge ordered the appellant and the Director-General of the Department to appear before him to explain what they had said and, if it was indeed that he had erred, what right they had to publish such statement. They filed affidavits and appeared represented by counsel. The Director-General was ultimately discharged but the appellant was convicted of contempt of court for bringing the dignity, honour and authority of the court into discredit and sentenced to a fine and suspended imprisonment.

This Court granted the appellant leave to appeal to it. On appeal the appellant, supported by the Freedom of Expression Institute, e.tv and Business Day as *amicus curiae*, argued that two of the appellant's constitutional rights, to *freedom of expression* and to a *fair trial*, had been infringed.

Appellant's counsel contended that the offence of scandalising, i.e. contempt of court by way of statements not made in court or relating to pending proceedings, could no longer be recognised in the light of the Bill of Rights. The argument for the amicus was that recognition of the right to freedom of expression limits scandalising to cases of clear and imminent danger to the administration of justice. The State supported the validity of both the crime and the procedure adopted.

All the justices found that although the crime of scandalising the court did limit freedom of expression, provided the crime was appropriately narrowly defined, the limitation was reasonable and justifiable in an open and democratic society in order to preserve confidence in the administration of justice. The court noted that in many such societies have this power for this purpose. It held that freedom of expression must be weighed against public confidence in the courts.

However, Sachs J disagreed with the majority of justices as to how such balance is to be struck. The majority (per Kriegler J) held that because the Constitution regards human dignity, equality and freedom as foundational, not freedom of expression, and both recognises the importance of the dignity of the judiciary and demands that it be protected, conduct or language really likely to damage the administration of justice is punishable as scandalising. In a separate judgment, Sachs J expressed the view that, to justify limits on freedom of speech, something more is required than simply proof of utterances likely to bring the judiciary into disrepute: it must be likely to have an impact of a sufficiently serious and substantial nature as to pose a real and direct threat to the administration of justice.

All the justices found that the summary procedure, such as was adopted in the high court, had limited a number of constitutionally protected fair trial rights in a manner not justifiable in cases of scandalising. They should be prosecuted in the normal way.

In this case there had been no defiance of a court order, as the judge seems to have thought, nor did the appellant's public utterances constitute scandalising. The appellant's conviction and sentence were accordingly set aside.