

**Dikgang Moseneke and Others v The Master of the High Court
CCT 51/2000**

Explanatory Note

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 discrimination between black and white in the administration of deceased estates. When Mr Moseneke senior died in 1999 without leaving a will, his estate was reported to the Master of the High Court in terms of the Administration of Estates Act. The Master referred the estate to the magistrate in Pretoria to be dealt with in terms of the Black Administration Act and later explained that the Master's office did not have the power to administer intestate estates of black persons.

The family applied to the Transvaal High Court for an order declaring the Master's refusal to register and administer the estate unconstitutional and ordering him to do so. The family's legal representatives asked for and were granted an order of court declaring invalid a regulation made under the Black Administration Act which authorised magistrates to deal with intestate black estates. It did not, however, deal with the section in the Act itself which prohibited the Master from dealing with intestate black estates. The result was that neither a Master nor a magistrate could deal with the intestate deceased estates of thousands of African families.

This led to the Constitutional Court dealing with the matter urgently. Justice Sachs, writing for a unanimous court, held that the section and the regulation both impose differentiation on the grounds of race, ethnic origin and colour, and as such constitute unfair discrimination in breach of the Bill of Rights. Although magistrates might provide practical advantages to those of limited means in areas far from a Master's office, the racial discrimination is an affront to all in our non-racial society. The practical convenience could be achieved equally well by non-discriminatory provisions. Notwithstanding its discriminatory provisions, the Black Administration Act had become encrusted with processes of great practical day-to-day importance.

To strike down the section and regulation with immediate effect without making practical alternative arrangements could create confusion and lead to new injustices. The answer was to keep the regulation alive for two years so as to give Parliament a chance to harmonise and de-racialise the laws dealing with deceased estates in an effective manner. During the period of suspension African families would then have the option to go either to the Master's office or the magistrate. Eventually a new law would cater for all persons, black and white on the same basis.

The Women's Legal Centre was admitted as amicus curiae. It contended that in the case of intestate estates of deceased Africans, race, gender and culture interacted in a way which discriminated indirectly against African widows. Sachs J held that if the foundational value of creating a non-sexist society was to be respected, proper consideration had to be given to the effect of the measures on the dignity of widows and their ability to enjoy a rightful share of the family's worldly goods. There was not enough material before the Court, however, to justify an investigation into these aspects in the present case.