
Explanatory note

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

Mr Walker, a resident of Constantia Park, a formerly white suburb of Pretoria, challenged the constitutionality of certain actions of the Pretoria City Council. The Council was established by the amalgamation of a number of municipalities, including, the former black townships of Atteridgeville and Mamelodi and the former white municipality which was known as the Pretoria City Council. For the sake of convenience the latter area was referred to as 'old Pretoria'. It was common cause that the population of Atteridgeville and Mamelodi is black and that of old Pretoria almost exclusively white.

The council had sued Mr Walker for arrears in the amount of R4 753, 84 for charges in respect of municipal services rendered to him. The issue arose from the levying by the council of charges for water and electricity on a differential basis. Charges were levied against Mr Walker and other residents of old Pretoria on the basis of a consumption-based tariff measured by means of meters installed on each property. The residents of Mamelodi and Atteridgeville however, due to absence of meters, were levied on the basis a flat rate per household.

After the amalgamation the council embarked on a programme to redress the obvious disparities that existed between the townships and old Pretoria. This involved the upgrading of services in Atteridgeville and Mamelodi as well as the installation of meters for recording consumption of water and electricity. The council stated that this was in accordance with its constitutional obligation to achieve equality among residents in its area. During this period the council continued to levy water and electricity in Atteridgeville and Mamelodi on the basis of a flat rate until all meters had been installed. Mr Walker, seeing that the council was charging residents of the two townships on the basis of a flat rate, and him and other residents of old Pretoria on a consumption-based tariff, refused to pay a metered rate but only an amount equivalent to the flat rate. The council also instituted legal action for the recovery of arrears against the non-paying residents of old Pretoria, including Mr Walker, whereas this was not done in respect of defaulters in Atteridgeville and Mamelodi. He contended that the differential treatment of the people of old Pretoria on one hand and those of Atteridgeville and Mamelodi on the other constituted an infringement of his right not to be a victim of unfair discrimination under section 8(2) of the interim Constitution. He also contended that the failure by the council to apply uniform rates contravened section 178(2) of the interim Constitution.

Unfair discrimination

Mr Walker's constitutional complaints on the basis of section 8(2) were as follows:

- (a) as the flat rate in Atteridgeville and Mamelodi was lower than the metered rate it meant that the residents of old Pretoria were subsidising those of the two areas;
- (b) the council failed to apply a metered rate uniformly even after meters had been installed on some properties in Atteridgeville and Mamelodi;

(c) only residents of old Pretoria were sued by the council for the recovery of arrears while defaulters in Atteridgeville and Mamelodi were not sued.

The magistrate had held that the differentiation amounted to discrimination on geographical grounds and not on race. He went on to hold that the discrimination had not been shown to be unfair and that Mr Walker's defence had to fail. Mr Walker was therefore ordered to pay the amount claimed by the council. He appealed to the High Court, which held that the council had infringed his right to equality by unfairly discriminating against him. The High Court set aside the magistrate's order and substituted it with an order of absolution from the instance with costs. The matter was then dealt with on appeal by the Constitutional Court.

Deputy President Langa, who wrote judgment for the majority held that the council differentiated between Mr Walker and other residents of old Pretoria and those of Atteridgeville and Mamelodi by levying charges on a differential basis and by selectively suing non-paying residents of old Pretoria alone. This differentiation was held to amount to indirect discrimination on the basis of race. What then needed to be determined was whether the discrimination was unfair or not. This, it was held, involved an examination of the impact of the discrimination on Mr Walker. With regard to cross-subsidisation and council's failure to apply metered rates uniformly, the Court concluded that the discrimination was not unfair. In relation to selective recovery of debts, the majority held that as the impact of the policy affected Mr Walker in a manner comparably serious to an invasion of his dignity the discrimination was unfair.

Uniform structure of service charges

Mr Walker also complained that the levying of charges on a differential basis contravened section 178(2) of the interim Constitution in that the council failed to base its rates, levies, taxes, etc. on a uniform structure for its area of jurisdiction. On appeal to the Constitutional Court, although it was held that section 178(2) required a local authority to establish a clear structure in terms of which rates, taxes, etc would be levied it was found not necessary to decide whether the section also applies to the manner in which the tariff is enforced.

Justice Sachs agreed in general with Langa DP's judgment but dissented from his view that selective enforcement of debt recovery by the council amounted to unfair discrimination. He noted that in what appeared to have been an effort to rise above the politics of race and articulate the spirit of civic responsibility and compassion that animated the Constitution, the council (in which voters of the affluent parts of Pretoria were well represented) embarked on a negotiated, step-by-step process to fulfill its obligations to those whom previous local governments had at best ignored and at worst oppressed. Such a process, however ineptly carried out at times, was aimed at overcoming the practical difficulties and psychological factors that kept the urban community divided and entrenched disadvantage.

Sachs J found that from a legal point of view it was incongruous to regard Mr Walker as a victim of unfair discrimination as a result of such a process. He was disturbed in no way in his enjoyment of residence in a neighbourhood which had been made affluent by state-enforced advantage in the past. The group with which he identified himself continued to get the benefit of regular municipal services at all material times. He was not called upon to do any more than to pay what he owed for services he had always received. He was not being singled out or targeted in any way, neither because of his race nor even because he lived in a comfortable neighbourhood. According to Sachs J, Mr Walker, although treated differently, was not

discriminated against in any manner whatsoever; alternatively, if the council's conduct could correctly be classed as discriminatory against him, it was by no means unfair.

Had Mr Walker's objective been to seek the aid of the court in achieving equal and impartial enforcement of the law, and not, as it was in this case to get absolution from his own responsibilities under the law, different considerations could well have come into play.

With regard to the remedy, it was held that absolution from the instance was not appropriate relief in the circumstances. In the result the Court's order was that the council's appeal succeeds and the High Court's order be set aside.

Although Sachs J dissented in respect of one important aspect, he concurred in the rest of the judgment of Langa DP and in the order, which was therefore a unanimous order of the Court.