



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**M v The State**

**Case CCT 53/06  
Medium Neutral Citation [2007] ZACC 18**

**Date of Judgment: 26 September 2007**

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### **MEDIA SUMMARY**

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

Today the Constitutional Court handed down judgment in a matter concerning the impact of the constitutional injunction that the best interests of a child are paramount in all matters concerning the child on sentencing of primary caregivers of young children.

The applicant, M, is a 35 year old single mother of three boys aged 16, 12 and 8. She was convicted for a second time, while out on bail, on multiple counts of credit card fraud, the total amount of which involved R29 000, and sentenced to four years' direct imprisonment in the Regional Court. She successfully appealed against the conviction on one of the counts, involving an amount of R10 000, to the High Court, which converted her sentence to one of imprisonment from which she could be released under correctional supervision after serving eight months of imprisonment. After unsuccessfully petitioning the Supreme Court of Appeal for leave to appeal against the order of imprisonment, she applied to this Court for leave to appeal.

Sachs J, with whom Moseneke DCJ, Mokgoro J, Ngcobo J, O'Regan J, Skweyiya J, and Van der Westhuizen J concurred, held that focused and informed attention needed to be given to the interests of children at appropriate moments in the sentencing process. The objective was to ensure that the sentencing court was in a position adequately to balance all the varied interests involved, including those of the children placed at risk. This should become a standard preoccupation of all sentencing courts. To the extent that the current practice of sentencing courts fell short in this respect, proper regard for constitutional requirements necessitated a degree of change in judicial mindset.

He concluded that the Regional Magistrate passed sentence without giving sufficient independent and informed attention as required by section 28(2) read with section 28(1)(b) of the Constitution, to the impact on the children of sending M to prison, and that this failure carried through into the approach adopted by the High Court. Though the High Court was not unsympathetic to the plight of M and her children, it should itself have made the enquiries and weighed the information gained.

He stressed the seriousness of the offences for which M was convicted, and noted that nothing in the judgment should be construed as disregarding the hurt and prejudice to the victims of her fraud. Nevertheless, he concluded that in the light of all the circumstances of this case M, her children, the community and the victims who will be repaid from her earnings, stand to benefit more from her being placed under correctional supervision than from her being sent back to prison.

He accordingly upheld the appeal, and replaced the High Court sentence with a sentence of four years' imprisonment which he backdated to take account of the three months she had already served. The sentence was suspended for four years on condition that M is not convicted of a dishonesty offence during that period, and further on condition that she repays her victims. In addition, she was placed under correctional supervision for three years, which included community service of ten hours per week for three years and counselling on a regular basis.

In a separate judgment concurred in by Navsa AJ and Nkabinde J, Madala J agreed with the reasoning of Sachs J insofar as it related to the best interests of the children in terms of section 28(2) of the Constitution. He agreed that the Regional Magistrates' Court and the High Court had not adequately considered the best interests of the children but found that this Court was now in a position to consider afresh these interests in the light of the many reports submitted by the parties. In terms of the best interests of the children, he found that there were in fact many relatives willing to care for the children if M were to be imprisoned. Once the best interests of the children were taken into account, he looked at the specific facts of this case, the nature of the offender and the offences committed and found that there was no justifiable reason to interfere with the sentence imposed on M by the High Court.

He held that the interests of the children cannot be viewed in isolation and that a nuanced approach should be adopted when balancing the best interests of the children and the interests of society in regard to deterrence, punishment and retribution. He therefore concluded that the appeal should be dismissed.