

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

van der Walt v Metcash Trading Limited

Case CCT 37/01

Decided on 11 April 2002

Media Summary

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

On two successive days, the Supreme Court of Appeal (SCA) refused leave to appeal to one petitioner and granted leave to appeal to another where the essential facts and grounds for appeal in both petitions were substantially identical. Both cases were, by agreement between the parties, treated as 'test cases', one in the Johannesburg High Court, the other in the Pretoria High Court. In both cases summary judgment had been granted against the respective defendants for part of the claim made by Metcash Trading Limited pursuant to the terms of a franchise agreement. In the case of Mr Kgatle, the SCA granted the petition but dismissed it in the case of the applicant, Mr van der Walt.

The issues before this Court were first, whether the grant of Mr Kgatle's application and the refusal of that of the applicant was arbitrary and in violation of the rule of law. Secondly, whether it was a violation of the applicant's right of access to court. Finally, whether the applicant's right to equality before the law and the right to equal protection and benefit of the law had been violated by the difference in outcome of the two SCA orders.

The majority of the justices of this Court concurred with the judgment written by Justice Goldstone who held that although it is unfortunate that contrary orders should be issued by the SCA in substantially identical cases, this did not result in the breach of any constitutional right of Mr van der Walt. The majority held that there was nothing to suggest that either of the orders was arbitrary. The panels were required to exercise a discretion in determining the prospects of success on appeal. In exercising such a discretion, reasonable minds may well differ. This does not make either order incorrect.

The majority decided further that the applicant's right of access to court was not violated. Section 21(3) of the Supreme Court Act provides that litigants who dispute the correctness of an order made by the High Court, are entitled to apply to the SCA for leave to appeal.

In terms of this act, the decision of the SCA on granting or refusing leave to appeal is final. There is no suggestion that this provision is inconsistent with the Constitution.

Access to court for this purpose, to which litigants are entitled, was accorded to the applicant.

Lastly, the majority held that the rights provided in section 9(1) which provides that everyone is equal before the law and has the right to equal protection and benefit of the law, do not guarantee equality of outcome in litigation. They decided that section 9(1) guarantees that all persons in a similar position must be afforded the same right to access to court and just procedure and that the applicant was not denied such rights. In terms of the order of the Court, the application was dismissed with costs.

Justices Madala, Ngcobo and Sachs dissented, finding that the issuing of the two diametrically opposed orders by the SCA on two successive days in the two cases involving identical issues was manifestly unequal, unjust and inconsistent with the Constitution.