

**DU TOIT AND ANOTHER v THE MINISTER FOR WELFARE AND POPULATION
DEVELOPMENT AND OTHERS**

CCT 40/01

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 the rights of same-sex life partners jointly to adopt children. The applicants are partners in a longstanding lesbian relationship who some years ago brought an application in the Pretoria children=s court jointly to adopt two children, a brother and sister. However, due to the provisions of the Child Care Act which confines joint adoption to married couples, the children=s court could only grant custody and guardianship rights to one partner (the second applicant).

The applicants then brought an application in the Pretoria High Court challenging the constitutionality of certain provisions of the Child Care Act and Guardianship Act. They claimed that these two statutes discriminated against them on the basis of their sexual orientation and marital status; infringed the dignity of the first applicant; and undermined the constitutional principle that the best interests of the child are paramount in matters concerning children. The respondents withdrew their initial opposition to the matter and indicated that they would accept the High Court=s ruling. The High Court held that the two statutes indeed infringed constitutional rights and ordered that certain words be read into them so as to allow same-sex life partners jointly to adopt children. The applicants then approached this Court for confirmation of the order made by the High Court, as is required by the Constitution.

In the confirmation proceedings, this Court appointed a curator ad litem to represent not only the interests of the children involved in this particular matter, but all children who may be affected by this Court=s order. The applicants were also supported by the Lesbian and Gay Equality Project, which was admitted as an amicus curiae to provide additional evidence.

In a unanimous judgment of the Court, Skweyiya AJ found that the statutory provisions infringe constitutional rights. The restriction of joint adoption to married persons discriminates on the grounds of sexual orientation and marital status. Furthermore, the dignity rights of the first applicant are infringed because they deny her due recognition as a parent of the two children. Finally, the Court held that the legislation infringes the principle of the paramountcy of a child=s best interests.

Accordingly, this Court confirmed the order made by the High Court and provided that the legislation must now allow same-sex life partners jointly to adopt children where they are otherwise found to be suitable parents.