

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 30/05

JOHANN DE KOCK

Applicant

versus

MINISTER OF WATER AFFAIRS AND FORESTRY

First Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

Second Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Fourth Respondent

HUMAN RIGHTS COMMISSION

Fifth Respondent

MANAGER EMFULENI LOCAL COUNCIL

Sixth Respondent

Decided on : 26 September 2005

JUDGMENT

THE COURT:

[1] The applicant, Mr Johann de Kock, comes to this Court without legal representation. He applies for direct access under Rule 18 and in terms of section 167(6)(a) of the Constitution. The respondents include the Minister of Water Affairs and Forestry, the Minister of Environmental Affairs, the President, the Director of Public Prosecutions, the Human Rights Commission and the Manager of the Emfuleni Local Council. The respondents are cited for their failure both to implement

legislation aimed at containing pollution and to prosecute ISCOR,¹ the alleged offender, for causing such pollution.

[2] Although Mr de Kock appears to allege the infringement of various rights, including his environmental rights² and his property rights³ based on the dangers to health caused by pollution as a result of ISCOR's factory activities in Vanderbijlpark, the issues are not set out clearly or succinctly.

[3] This Court has stressed that direct access should be granted only in exceptional circumstances. As stated by Yacoob J in *Mkontwana v Nelson Mandela Metropolitan Municipality*:⁴

“The saving of time and costs, the importance of the issue or the existence of conflicting judgments on an issue in a case do not, without more, constitute exceptional circumstances and justify this Court being a court of first and last instance. Indeed the importance and complexity of the issues raised would weigh

¹ ISCOR (the Iron and Steel Corporation) is now known as Mittal Steel South Africa. It is an integrated minerals and metals company, focusing on the manufacture of steel products for the South African and international markets. It operates a number of steelworks including at Vanderbijlpark, Newcastle, Durban, Vereeniging and Kuils River.

² Section 24 of the Constitution provides:

- “Everyone has the right—
- (a) to an environment that is not harmful to their health or well-being; and
 - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

³ Section 25 of the Constitution.

⁴ *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC, Local Government and Housing, Gauteng and Others (Kwazulu-Natal Law Society and Msunduzi Municipality as Amici Curiae)* 2005 (1) SA 530 (CC); 2005 (2) BCLR 150 (CC).

heavily against this Court being a court of first and final instance. As a general rule, the more important and complex the issues in a case, the more compelling the need for this Court to be assisted by the views of another Court.”⁵

[4] Direct access makes this Court a forum of first and last instance. The first hurdle for an applicant is to set out issues clearly for purposes of adjudication. Rule 18(2) sets out the requirements:

(2) An application in terms of subrule (1) shall be lodged with the Registrar and served on all parties with a direct or substantial interest in the relief claimed and shall set out-

- (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
- (b) the nature of the relief sought and the grounds upon which such relief is based;
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot,
- (d) how such evidence should be adduced and conflicts of fact resolved.

Most of these requirements have not been complied with in this case and for that reason, direct access is refused.

[5] This is not to say the matter ends there. Mr de Kock raises important yet difficult issues of environmental rights which may well require adjudication and to which the relevant authorities or bodies may need to provide appropriate responses. Moreover, the case raises issues which are of public interest. Without legal assistance, this applicant will struggle to bring properly a case in terms of the applicable law. In

⁵ Id at para 11.

his papers, Mr de Kock has brought to the attention of this Court the need for him to be considered for legal assistance. He outlines his desperate and failed attempts to obtain legal assistance from the relevant bodies. He apparently attempted to obtain support from the Department of Labour, the President, the Emfuleni Local Council, the Director of Public Prosecutions, the Public Protector and the Human Rights Commission. He also states that he has been refused legal aid.

[6] Given the extensive efforts made by Mr de Kock to seek legal assistance, the public interest raised in this matter, the elusive nature and importance of environmental law, the difficulties attendant upon bringing appropriate environmental law cases before a court and the public responsibility of the organised legal profession, this seems an appropriate case to direct the Registrar to bring this judgment to the attention of the Law Society of the Northern Provinces, with a request that it consider whether one of its members may provide assistance to Mr de Kock. The Law Society may of course choose to collaborate with academics skilled in the area of environmental matters and/or with non-governmental organisations specialising in that area.

[7] In the result, the following order is made:

1. The application for direct access is refused.
2. The Registrar is directed to bring this judgment, and in particular paragraph 6, to the attention of the Law Society of the Northern Provinces.

Langa CJ, Moseneke DCJ, Mokgoro J, Ngcobo J, O'Regan J, Sachs J, Skweyiya J,
Van der Westhuizen J and Yacoob J participated in the decision of the Court.