



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Strategic Liquor Services versus Mvumbi, T N. O. and Others**

**CCT 33/09  
[2009] ZACC 17**

**Date of Judgment: 18 June 2009**

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### MEDIA SUMMARY

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*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.*

Strategic Liquor Services, the applicant in this matter, seeks leave to appeal against a judgment of the Labour Court dated 20 February 2007, which dismissed an application to review a Commission for Conciliation, Mediation and Arbitration (CCMA) award in favour of Mr Wesley Redgard. Mr Redgard was employed by the applicant from October 2003 until February 2004. Despite the fact that Mr Redgard had tendered his resignation, the CCMA held that he had been constructively dismissed, and, notwithstanding the short period of employment, granted him compensation equivalent to ten months' salary (R121 500). Incensed by this outcome, the employer brought review proceedings in the Labour Court, but failed. It unsuccessfully sought leave to appeal to the Labour Appeal Court, and then petitioned the Supreme Court of Appeal for special leave to appeal. That application, too, was dismissed with costs.

In its application to this Court, the employer contended that the CCMA – and the Labour Courts in refusing to review its determination – misconceived the jurisdictional prerequisites for constructive dismissal, since on Mr Redgard's own version he had a choice whether to resign or be subjected to poor performance procedures.

The Court held that it would be inappropriate for it to intervene. The employer's submission misconstrued the test for constructive dismissal, which does not require that the employee have no choice but to resign, but only that the employer should have made continued employment intolerable. There are therefore no grounds for overturning the CCMA decision.

However, the court drew attention to further troubling features of this case. First, the case was beset by severe delays. Second, after the dismissal of its application by the Labour Court, Strategic Liquor was unable to obtain written reasons for the dismissal from the Labour Court, nor for the dismissal of its application for leave to appeal by the Labour Appeal Court.

This Court observed that it is lamentable that so many delays occurred, some attributable to judicial management of Strategic Liquor's case. The Supreme Court of Appeal has recently in comparable circumstances (where the Labour Appeal Court took more than fifteen months to deliver judgment) deplored what it called "systemic delays" in the Labour Courts.

This Court also drew attention to a recent judgment in which it recorded that the Labour Appeal Court had delivered judgment more than two and a half years after oral argument.

It therefore endorsed the concerns the Supreme Court of Appeal expressed.

It found further that the failure by the Labour Court to supply written reasons for its decision was equally lamentable. It is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigants' rights, and an impediment to the appeal process. A reasoned judgment is essential to the appeal process, and failure to provide one when requested cuts across the employer's right of access to courts.

It is a grave matter when courts themselves infringe rights in the Bill of Rights and it must be hoped that this occurrence is and will remain extremely rare.

The application for leave to appeal was dismissed with costs.