



CONSTITUTIONAL COURT OF SOUTH AFRICA

The Children's Institute v The Presiding Officer of the Children's Court and Others

Case CCT 69/12

Date of Hearing: 18 September 2012

Date of Judgment: 9 October 2012

MEDIA SUMMARY

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.

On Tuesday 9 October 2012, the Constitutional Court handed down judgment in a case about whether an amicus curiae (friend of the court) can present evidence in a case concerning the interests of children.

The Children's Institute applied to be admitted as a friend of the court in proceedings before the South Gauteng High Court, Johannesburg (High Court), in relation to whether SS, a minor orphan, was in need of care and protection. The Children's Institute also applied to adduce evidence in those proceedings. Its application was denied because the High Court concluded that its Rules do not permit friends of the court to adduce evidence in a High Court.

The Children's Institute then applied to the Constitutional Court for leave to appeal against the judgment of the High Court. It submitted that the High Court Rule does not preclude a friend of the court from adducing evidence in any High Court. The Children's Institute contended that, in interpreting the High Court Rule, regard must be had to the important role that amici curiae play in representing the interests of vulnerable groups and in the administration of justice. The application was not opposed.

In a unanimous decision authored by Khampepe J, the Court found that the High Court Rule, properly interpreted, is permissive and allows friends of the court to adduce evidence. However, whether and to what extent to allow friends of the court to adduce evidence remains within the discretion of the High Court in each particular case. The Court noted, in an aside, that even if the High Court Rule were silent on the question of the admission of evidence by an amicus, section 173 of the Constitution gives superior courts the inherent power to regulate their own process,

which includes the ability to permit amicus curiae to adduce evidence where it is in the interests of justice.