



CONSTITUTIONAL COURT OF SOUTH AFRICA

Johannes Moko v Acting Principal of Malusi Secondary School and Others

CCT 297/20

Date of Judgment: 28 December 2020

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 Monday, 28 December 2020 at 10h00, the Constitutional Court handed down judgment in an urgent application for direct access to the Constitutional Court. The central question before the Constitutional Court was whether there had been a violation of the right to education in section 29(1) of the Constitution.

The applicant, Mr Moko, was a Grade 12 student who, on the morning of 25 November 2020, arrived at his school in Limpopo to write the Business Studies Paper 2 matric examination. He was stopped at the school gates by the first respondent, the Acting Principal of Malusi Secondary School, because he had failed to attend certain extra lessons. Mr Moko was informed that he needed to fetch his parents or guardians, in order to discuss the missed extra lessons, and to not return to the school without them. Mr Moko left to find his guardians but, unable to do so, returned to the school, alone, sometime later. By the time he returned, the Business Studies Paper 2 examination was underway. The Acting Principal refused to allow Mr Moko entry into the examination room and Mr Moko subsequently missed the examination.

Various meetings with the Acting Principal and members of the Limpopo Department of Education ensued and Mr Moko was informed that he would only be able to write the supplementary examination in May 2021. Aggrieved by this decision, as he wished to pursue tertiary education at the start of 2021 and writing the examination in May would delay this, Mr Moko brought an urgent application to the High Court for an order that he be given an opportunity to write the missed examination imminently. The High Court struck the matter off the roll for lack of urgency.

Mr Moko applied for leave to approach the Constitutional Court directly, and on an urgent basis, for an order that the conduct of the Acting Principal was inconsistent with the right to basic and further education in section 29(1)(a) and (b) of the Constitution and that he be afforded the opportunity to write the Business Studies Paper 2 examination before the marking of the other matric examination scripts and the release of the other matric results.

Mr Moko submitted that this matter was urgent because, if he did not sit the examination imminently, it would affect his ability to pursue further studies at an institution of higher learning in February 2021. On the matter of direct access to the Constitutional Court, Mr Moko contended that it would be in the interests of justice for the Constitutional Court to determine the matter, as the matter was struck off the urgent roll in the High Court and a determination of the matter on the ordinary roll in the High Court would leave him without effective relief.

On the merits, Mr Moko submitted that his right to basic education in section 29(1)(a) of the Constitution was infringed by the conduct of the Acting Principal. He contended that the conduct also amounted to a violation of his right to further education in section 29(1)(b) of the Constitution because, if he was only allowed to write the examination in May 2021, he would be unable to begin tertiary education in February 2021.

The Acting Principal did not oppose the application brought by Mr Moko to the Constitutional Court. The second to fourth respondents, the MEC and Head of the Department of Education, Limpopo and the Minister of Basic Education (collectively, the Department), and the fifth respondent, Umalusi, also did not oppose the application. The Department filed written submissions to assist the Constitutional Court in its determination of the matter, in which they offered Mr Moko the opportunity to write the missed examination in January 2021. The matter was determined on the papers without an oral hearing.

The Constitutional Court, in a unanimous judgment penned by Khampepe J (Mogoeng CJ, Jafta J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ concurring) granted leave for the applicant to approach the Constitutional Court directly on an urgent basis. It held that a lack of urgent relief could have a significant adverse effect on Mr Moko's future and that the urgency of the matter was undeniable. It held further that the circumstances in this matter were of an exceptional nature and Mr Moko had raised compelling reasons for direct access. It was therefore in the interests of justice to grant leave to approach the Constitutional Court directly and on an urgent basis.

The Constitutional Court highlighted the transformative role of education in South Africa and the importance of education for individuals and society as a whole. It found that the matric examinations fall within the purview of "basic education", the right to which is protected by section 29(1)(a) of the Constitution. It held that the Acting Principal had both a positive obligation to give effect to that right and a negative obligation to not interfere with Mr Moko's right to basic education. The Acting Principal's conduct that resulted in Mr Moko missing the Business Studies Paper 2 examination clearly amounted to a violation of the right to basic education. The Constitutional Court also noted that an undue

delay in the completion of his school education, as a result of the conduct of the Acting Principal, would similarly have an adverse effect on Mr Moko's right to further education, protected by section 29(1)(b) of the Constitution.

As a result, the Constitutional Court declared the conduct of the Acting Principal to be a violation of the right to education in section 29(1) of the Constitution. It ordered the Department and Umalusi to follow through with their offer to allow Mr Moko the opportunity to write the Business Studies Paper 2 examination at the start of January 2021 and to release the result of that examination simultaneously with the general release of the 2020 National Senior Certificate examination results.