

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 15/01

PETER SIEGWART WALLACH

Applicant

In re:

PETER SIEGWART WALLACH

Applicant

versus

RONALD LESTER SELVAN

First Respondent

THE SOCIETY OF ADVOCATES OF SOUTH AFRICA  
(WITWATERSRAND DIVISION)

Second Respondent

THE MINISTER OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT

Third Respondent

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JUDGMENT

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KRIEGLER J:

[1] The applicant asks for direct access to this Court and in the alternative for directions as to the procedure he should follow in raising what he alleges is a constitutional challenge to legal proceedings he brought, first, in the Witwatersrand High Court and then in the Supreme Court of Appeal. On 27 July 2000 the applicant applied urgently in the High Court for an order declaring “unconstitutional and invalid” the appointment of the first respondent as an acting judge. The next day the matter came before Spoelstra J, who dismissed it with costs and stated that he would furnish his reasons if and when requested to do so. The applicant asked for the reasons and gave

notice of an application for leave to appeal to the Supreme Court of Appeal (the SCA) against the dismissal of his application. On 2 August 2000 the judge orally delivered his reasons for dismissing the original application and proceeded also to dismiss the application for leave to appeal. The applicant, who had been telephonically notified of the hearing, was not present in court when this took place.

[2] The applicant communicated with the court transcribers but could not trace the transcript of the proceedings on 2 August 2000. He nevertheless petitioned the SCA for leave to appeal and, having been told by the registrar of that Court that a copy of the original judgment was needed, again tried to trace a transcript. This attempt also failed and in March 2001 the SCA notified the applicant that his application for leave to appeal had been refused “for want of realistic prospects of success on appeal”. He thereupon turned to this Court for relief.

[3] The recording of the proceedings on 2 August 2000 has now been traced, transcribed and forwarded to this Court. From this it is clear not only that the judge duly considered the original application and gave detailed reasons for dismissing it, but that such dismissal was fully warranted. The application was devoid of merit and refusal of leave to appeal, first by Spoelstra J and then by the SCA was no less warranted. Moreover, there is no basis for the complaint the applicant addressed to this Court that he has been dealt with unfairly by the High Court or the SCA. On the contrary, although the case against the first respondent was without any substance, Spoelstra J heard and decided the matter urgently, responded promptly and fully to the request for reasons and, had the applicant attended the proceedings at the time specified, he would have heard why his original application had been dismissed and why he was being refused leave to

appeal. The reasons furnished by the judge are couched in layman's language and explain why the applicant had no basis for contending that any of his constitutional rights could be infringed by the acting appointment he challenged.

[4] There is no reasonable prospect that the applicant could persuade this Court of the validity of his constitutional contentions. His original complaint had no merit and the basis upon which he wished to raise it in this Court, namely the alleged failure on the part of Spoelstra J to give reasons for his decision, has been shown to be wrong.

*Order*

[5] The application for direct access to this Court and for alternative relief is accordingly dismissed.

Chaskalson P, Langa DP, Ackermann J, Goldstone J, Madala J, Mokgoro J, O'Regan J,  
Sachs J and Yacoob J concur in the judgment of Kriegler J.