

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 10/02

SOUTH AFRICAN MUNICIPAL WORKERS UNION Applicant

versus

THE CITY OF CAPE TOWN First Respondent

PROVINCIAL GOVERNMENT OF THE
PROVINCE OF THE WESTERN CAPE Second Respondent

MINISTER OF SAFETY AND SECURITY Third Respondent

NATIONAL COMMISSIONER OF POLICE Fourth Respondent

INDEPENDENT MUNICIPAL & ALLIED TRADE UNION Fifth Respondent

POLICE, PRISONS AND CIVIL RIGHTS UNION Sixth Respondent

MINISTER FOR PROVINCIAL AND LOCAL
GOVERNMENT Intervening Party

Decided on : 9 May 2002

JUDGMENT

THE COURT:

[1] This is an application for leave to appeal directly to this court against a decision and order of the Cape of Good Hope High Court. The applicant unsuccessfully approached the High Court seeking an order setting aside a decision by the first respondent to establish a municipal police

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force. This decision had been taken without first consulting the applicant. The applicant then sought a certificate from the High Court in terms of rule 18 of the Rules of this Court. At the same time, the applicant sought leave from the High Court to appeal to the Supreme Court of Appeal in the event that this Court should refuse leave to appeal.

[2] The High Court issued a certificate stating that there was no constitutional matter of substance involved in the application and that it was not in the interests of justice for the matter to be brought directly to the Constitutional Court. On the other hand, the High Court certified that there was a reasonable prospect that this Court would reach a conclusion different to its own and that there was sufficient evidence on the record to enable this Court to dispose of the matter without having to refer the matter back to the High Court for further evidence. The High Court also granted leave to appeal to the Supreme Court of Appeal in the event that this Court refused leave to appeal. The first and second applicants have lodged notices of their intention to oppose this application.

[3] Given that this is a matter in the first instance concerning the interpretation of a statute, rather than the interpretation of a constitutional provision, and given that there are no other reasons to compel this Court to consider the matter on a direct appeal at this stage, it is our view that it is not in the interests of justice to permit the applicant to appeal directly to this Court, and that its application to do so should be refused. This application is a matter which should be heard first by the Supreme Court of Appeal. In reaching this conclusion, however, we wish to emphasise that the Court is not confirming the finding of the High Court that the application does not raise a constitutional matter of substance.

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[4] As the respondents in this Court have filed papers, costs have been incurred by both applicants and respondents. Although we have declined the application, we do not think it was unreasonable for the applicants to have approached this Court. In the circumstances, costs should be costs in the appeal to the Supreme Court of Appeal.

[5] The following order is made:

The application for leave to appeal directly to this court is refused. Costs to be costs in the appeal to the Supreme Court of Appeal.

Chaskalson CJ, Langa DCJ, Ackermann J, Du Plessis AJ, Goldstone J, Kriegler J, Madala J, Ngcobo J, O'Regan J, Sachs J and Skweyiya AJ.

CHASKALSON CJ:

For the applicant: Cheadle, Thompson & Haysom Inc, Johannesburg.

For the first respondent: Herold Gie & Broadhead, Cape Town.

For the second respondent: State Attorney, Cape Town.