

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 53/10
[2010] ZACC 15

In the matter between:

GREENFIELDS DRILLING CC

First Applicant

MAGARETHA MARIA HIBBERS

Second Applicant

MARIUS HIBBERS

Third Applicant

and

REGISTRAR OF THE SUPREME
COURT OF APPEAL

First Respondent

GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA

Second Respondent

MINISTER FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

Third Respondent

FIRSTRAND BANK LIMITED

Fourth Respondent

Decided on : 7 September 2010

JUDGMENT

THE COURT:

1] The applicants wish to appeal against a decision of the Supreme Court of Appeal

refusing them leave to appeal¹ against a High Court judgment.² They claim to be hamstrung in making the application for leave to appeal to this Court because the Supreme Court of Appeal gave no reasons for refusing leave to appeal. They therefore apply to this Court for direct access for the purpose of determining the constitutionality of the practice of the Supreme Court of Appeal not to give reasons for the refusal of applications for leave to appeal.

2] The issue raised by the applicant was, subject to one qualification, decided in this Court in *Mphahlele*.³ This Court held that it was not inconsistent with the Constitution for the Supreme Court of Appeal not to furnish reasons for its decisions refusing leave to appeal to it. The qualification just referred to is that the position might well be different if a constitutional matter is involved and the Supreme Court of Appeal is not the court of final instance, and finds expression in the following passage:

“The refusal of leave to appeal by the Supreme Court of Appeal is not appealable to any other Court. The failure to furnish reasons for a decision made under section 21 of the Supreme Court Act cannot prejudice the unsuccessful litigant in taking the matter further. Except in constitutional matters, the end of the litigation road has been reached.”⁴
(Footnote omitted.)

3] The applicants do not claim that any constitutional issue will arise in the

1 The order refusing leave to appeal was issued on 12 March 2010 under case no 624/2009.

2 *FirstRand Bank Limited t/a Wesbank v Greenfields Drilling CC and Others*, case no 7689/2008, North Gauteng High Court, Pretoria, 21 May 2009, unreported.

3 *Mphahlele v First National Bank of SA Ltd* [1999] ZACC 1; 1999 (3) BCLR 253 (CC); 1999 (2) SA 667 (CC).

4 *Id* at para 14.

contemplated application for leave to appeal to this Court, and none appears from their papers. In the circumstances, the application for direct access must be adjudicated on the basis that the Supreme Court of Appeal was the court of final instance in the application for leave to appeal that served before it. The application for direct access must accordingly be refused.

4] It is therefore not necessary to consider the question whether the Supreme Court of Appeal is obliged to furnish reasons when it refuses leave to appeal in a case in which a constitutional issue arises.

Order

5] In the result the following order is made:

The application for direct access is refused.

Ngcobo CJ, Moseneke DCJ, Brand AJ, Cameron J, Froneman J, Khampepe J, Mogoeng J, Nkabinde J, Skweyiya J and Yacoob J.