



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mbana v Shepstone & Wylie

CCT 85/14

Date of judgment: 7 May 2015

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.

Today the Constitutional Court handed down judgment in an application for leave to appeal against a decision of the Labour Court concerning claims of unfair discrimination, allegations of judicial bias and costs orders of the Labour Court and the Supreme Court of Appeal.

The applicant, Ms Yonela Mbana (Ms Mbana), a black woman and bursary recipient from the respondent, Shepstone & Wylie (Shepstone), was expected to complete her LLB degree in December 2008 and commence employment at Shepstone in January 2009. In July 2008, Ms Mbana informed Shepstone that she had to repeat a module and would only complete her degree in June 2009. In accordance with Shepstone's recruitment policy, which required candidate attorneys to have completed their law degrees prior to commencing employment, Ms Mbana only commenced employment in January 2010.

Notwithstanding this policy, in 2011, two candidate attorneys, a white woman and a black man, were permitted to remain employed as candidate attorneys at Shepstone without LLB degrees. Shepstone was only made aware that the two candidate attorneys had not fulfilled their degree requirements after they had commenced employment. In the course of litigation, it surfaced that in 2005, Shepstone had also deviated from its recruitment policy in employing one of its secretaries, a white woman, as a candidate attorney in one of its branch offices although she had not completed her LLB degree.

Following a failed attempt at conciliation, Ms Mbana applied to the Labour Court claiming unfair discrimination based on race and social origin or, alternatively, an arbitrary ground. In dismissing her application with costs, the Labour Court held that

Shepstone's deviation from its policy in the three cases did not evidence unfair discrimination and even if it did, that the deviation was both fair and justified. The Labour Court also dismissed her application for leave to appeal.

Ms Mbana later amended her grounds for seeking leave to appeal, adding that the presiding Judge in the Labour Court was actually biased or that there was a reasonable apprehension of bias on his part. The Labour Appeal Court dismissed her petition for leave to appeal and the Supreme Court of Appeal dismissed, with costs, her application for special leave to appeal. Ms Mbana also lodged a complaint of judicial bias against the Judge with the Judicial Conduct Committee. That complaint was dismissed. Ms Mbana then approached the Constitutional Court for relief.

The Constitutional Court decided the matter on the basis of the parties' written submissions without hearing oral argument. In a unanimous judgment, the Court found that no case was made out for discrimination based on race and social origin or an arbitrary ground. It also found that Shepstone had sufficiently justified the deviation from its recruitment policy in the three cases where it had employed candidate attorneys who had not completed their LLB degrees. Moreover, the Court held that there were no exceptional circumstances which would have justified a deviation in the case of Ms Mbana. With regard to the allegations of bias, the Court held that the allegations of actual bias regarding the judge's conduct should have been raised timeously and that his previous association with the respondent, which ended six years before he was appointed to the Bench, of itself did not meet the test for bias. In addition, the Court reasoned that there were no exceptional circumstances warranting its intervention with the costs orders of the Labour Court and the Supreme Court of Appeal. The Court, therefore, concluded that it was not in the interests of justice to grant leave to appeal.