



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mtyhopo v South African Municipal Workers Union National Provident Fund

CCT 48/15

Date of judgment: 1 October 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 a judgment concerning defamation and the right to freedom of expression.

The applicant, Mr Ayanda Mtyhopo, is a member of the respondent, the South African Municipal Workers Union National Provident Fund (Fund). Mr Mtyhopo and other union members were unhappy with the administration and management of the Fund and wanted to leave. From 2000, the South African Local Government Bargaining Council imposed a moratorium on transfers between funds, pending negotiations on the structure of municipal pension funds. This meant Mr Mtyhopo and the other disgruntled members could not leave the Fund. After years of trying to leave the Fund, Mr Mtyhopo lodged a complaint with the Pensions Fund Adjudicator and was successful. The Adjudicator concluded that the Fund's rules permitted its members to move their memberships to a different fund. However, the Fund successfully appealed to the South Gauteng High Court, Johannesburg and the Adjudicator's ruling was set aside.

Mr Mtyhopo later communicated his frustrations to a journalist at *The Herald* newspaper. The *Herald* published an article on the topic on 18 February 2013. The Fund complained that the article represented it as uncooperative and, worse, tainted by scandal. And the article mentioned the Adjudicator's decision without explaining that the Fund had succeeded in overturning it. This incensed the Fund. The Fund felt that Mr Mtyhopo had intentionally misled the journalist by not informing her that it had successfully appealed against the Adjudicator's decision. Additionally, it complained about a statement in the article that the Fund was "embroiled in a scandal in which R800 000 was allegedly stolen".

The Fund brought an application seeking an interdict against Mr Mtyhopo in the Eastern Cape Division of the High Court, Grahamstown. It argued that Mr Mtyhopo's statement in *The Herald* was defamatory. Mr Mtyhopo opposed the application arguing that the statement was not untrue. In 2014, the High Court held that Mr Mtyhopo had defamed the Fund. The Court also ordered Mr Mtyhopo not to make any further false or defamatory statements concerning the Fund, or to cause anyone else to do so. Both the High Court and the Supreme Court of Appeal refused Mr Mtyhopo leave to appeal. He then appealed to this Court.

Before the Constitutional Court, Mr Mtyhopo argued that he did not defame the Fund, and, if he did, he did not intend to. Furthermore, he argued that the High Court's order restricting his speech was overbroad and an unjustifiable infringement on his constitutional right to freedom of expression. The Fund argued that the High Court's decision was correct and that there was no reasonable alternative to the interdict to restrain Mr Mtyhopo from continuing to make defamatory statements against it.

In a unanimous judgment written by Cameron J, the Constitutional Court's assessment of the facts was that R800 000 was paid to a trustee of the Fund; the sum should not have been paid; and the trustee was in consequence removed from the Fund's board. This, the Court found, was a scandal. So, the statement in *The Herald* article that the Fund "was embroiled in a scandal in which R800 000 was allegedly stolen" was true and thus not defamatory. Therefore, an interdict restricting his speech was unwarranted and infringed his constitutional rights.

The Constitutional Court accordingly allowed the appeal with costs, and set aside the interdict granted by the High Court.