

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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Mary Patricia King and others v Attorneys' Fidelity Fund and Minister of Justice

In a judgment delivered today, the Supreme Court of Appeal has struck from its roll with costs an appeal in which disappointed investors sought to challenge a statute of Parliament that precluded them from obtaining compensation for their losses from the Attorneys' Fidelity Fund.

The appellants claimed that they deposited large sums of money with van Schalkwyks, a Port Elizabeth firm of attorneys, having been promised high returns. They claimed that instead of using their money in the investment scheme, the attorneys stole it. The Fund refused them compensation because of a 1998 amendment to the Attorneys Act 53 of 1979, which prevents clients recovering losses from the Fund where money is deposited with an attorney not in the usual course of practice, but for investment purposes.

Section 59 of the Constitution requires the National Assembly to 'facilitate public involvement in the legislative and other processes of the Assembly and its committees'. The investors claimed that in enacting the amendment, Parliament breached this obligation. They admitted that there had been consultation about the amending statute – but they said there was not enough. Since Parliament had not involved the public sufficiently in the process of adopting it, they claimed that the statute was invalid.

The SCA pointed out that in terms of s 167(4)(e) of the Constitution, only the Constitutional Court has jurisdiction to decide that Parliament has failed to fulfil a constitutional obligation. It was correct that subject to the Constitutional Court's confirmation the SCA and the high courts have jurisdiction to grant an order that a statute is constitutionally invalid. But the SCA pointed out that a statute may be invalid for different reasons. If it is claimed to be invalid because Parliament has failed to comply with a procedural prerequisite in enacting it (for instance, if a Bill does not obtain a majority of votes), or because a statute as enacted violates a provision of the Bill of Rights, the SCA and the high courts do have jurisdiction to grant an order.

A statute might also be invalid because Parliament so completely violates an obligation the Constitution places upon it that it ceases to be or to function as the body envisaged in the Constitution. In such an extreme case, the SCA said, Parliament would lack the power to pass legislation under the Constitution.

But the appellants had not made out any such case. They admitted that there had been public involvement. And they did not claim that Parliament had ceased to function entirely as the body entrusted with legislative capacity under the Constitution. Their claim therefore fell far short of making out a case for legislative invalidity, and in any event even if they made out a sufficient case, only the Constitutional Court could grant them the relief they seek.

The appeal was struck from the roll with costs.

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