



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Maria Jane Mogaila v Coca Cola Fortune (Pty) Limited**

**CCT 76/16**

**Date of judgment: 2 March 2017**

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### **MEDIA SUMMARY**

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*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.*

On 2 March 2017, the Constitutional Court handed down judgment in an application for direct access. The applicant, Ms Maria Jane Mogaila, sought in effect an order that, (a), the Prescription Act was inconsistent with the Labour Relations Act (LRA), and, (b), an order of reinstatement granted in her favour did not constitute a “debt” for the purposes of the Prescription Act. In addition, Ms Mogaila sought an order directing the respondent, Coca Cola Fortune (Pty) Limited (Coca Cola), to reinstate her to her previous employment position.

The application was lodged in April 2016. At that stage, the Court had already set down for hearing the application of Mr Sizwe Myathaza against the Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others (Myathaza). Since the issues in the two applications corresponded, the Court informed Ms Mogaila that her application would be held in abeyance until the determination of Myathaza. That has now happened. On 15 December 2016, this Court unanimously upheld Mr Myathaza’s appeal in *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus* [2016] ZACC 49 (*Myathaza*).

Ms Mogaila was dismissed after a disciplinary enquiry had found her guilty of assault. Aggrieved, she approached the Commission for Conciliation, Mediation and Arbitration (CCMA). An arbitration hearing took place. On 29 April 2008, the Commissioner found Ms Mogaila’s dismissal procedurally fair but substantively unfair. The award ordered Coca Cola to reinstate Ms Mogaila and to pay her six months’ back pay. On 2 June 2008, Ms Mogaila applied to have the arbitration award formally certified in terms of section 143(3) of the LRA. This was necessary before the award could be enforced. When she reported for work, the human resources department informed her that Coca Cola intended

to take the arbitration award on review, which it did. The Labour Court dismissed the review application. A petition to the Labour Appeal Court was subsequently dismissed on 2 October 2013.

After the review proceedings were finalised, Ms Mogaila returned to work. Upon her return, she was told that since the arbitration award constituted a “debt” for the purposes of the Prescription Act and that she had failed to enforce it within three years after 29 April 2008, the award could no longer be implemented as it had prescribed.

In a unanimous judgment by the Court, Ms Mogaila was granted direct access and an order declaring that the reinstatement award had not prescribed. The Court relied on *Myathaza* in reaching this conclusion. The first judgment of *Myathaza*, written by Jafta J, with Nkabinde ADCJ, Khampepe J and Zondo J concurring, held that the Prescription Act was incompatible with the provisions of the LRA. Based on the fundamental differences between the LRA and the Prescription Act, the first judgment concluded that the latter did not apply to the LRA. In a statement that was additional to the judgment’s basis of decision (obiter), the first judgment further held that, even if the Prescription Act were to apply, the reinstatement award in that case could not prescribe because it did not constitute a “debt” for the purposes of the Prescription Act. In a judgment concurring with the approach of Jafta J, Zondo J wrote separately to underscore why the Labour Court and the Labour Appeal Court were mistaken in their approach (third judgment). The third judgment supported the first judgment’s finding that the Prescription Act was not applicable to LRA matters and, in addition, concluded that an arbitration award did not constitute a “debt” for the purposes of the Prescription Act.

The second judgment in *Myathaza* was written by Froneman J, with Madlanga J, Mbha AJ and Mhlantla J concurring. The second judgment held that the Prescription Act was not inconsistent with the LRA, but complementary to it. After finding the two statutes consistent, the second judgment examined the meaning of “process” and “debt” in section 15 of the Prescription Act and held that service of process initiating the CCMA dispute resolution process interrupted prescription. Prescription remained interrupted until any review proceedings seeking to nullify the CCMA outcome were finalised.

In the present case, the Court held that because of the parity of votes in *Myathaza*, in which none of the judgments secured a majority, no binding basis of decision (ratio) emerged from the Court’s decision. However, on either approach, that of Jafta J and Zondo J, or that of Froneman J, Ms Mogaila was entitled to an order declaring that the arbitration award ordering her reinstatement had not prescribed.

Whether the arbitration award in her favour could not have prescribed because the Prescription Act did not apply at all to LRA matters, as the first and third judgments held (or because, even if the statute were applicable, the reinstatement order did not constitute a “debt” for the purposes of the Prescription Act), or because, on the second judgment, the CCMA referral interrupted prescription, persisting until the finalisation of the review proceedings in October 2013, Ms Mogaila must succeed. On the second judgment’s

approach, the arbitration award would have prescribed only in October 2016. Ms Mogaila filed her application in this Court timeously, in April 2016. Prescription was therefore interrupted, again, pending the finalisation of these proceedings. On either approach, the Court held that Ms Mogaila was entitled to proceed with the certification of the award under section 143 of the LRA.