



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### LIMPOPO LEGAL SOLUTIONS v VHEMBE DISTRICT MUNICIPALITY AND OTHERS

CCT 119/16

Date of judgment: 17 August 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 17 August 2017 the Constitutional Court handed down its judgment in an application brought by Limpopo Legal Solutions (“LLS”) against Vhembe District Municipality, the Minister of Environmental Affairs and Thulamela Municipality (the respondents) for leave to appeal against a decision of the Limpopo Local Division of the High Court (High Court). That Court struck off the roll with costs a certain application brought by LLS on an urgent basis.

LLS is a voluntary non-profit association which seeks to use the law to promote respect for human rights and to hold municipalities and other government entities to account for the use of public funds. In the present case LLS brought an application against the respondents for an order compelling them to provide sanitation facilities for the residents of Malumelele B Extension 1, Limpopo because it complained that the residents of that area had not been provided with such facilities for a long time and this infringed their right to human dignity. The High Court struck the application off the roll, firstly, on the basis that it was not urgent, secondly that LLS had no *locus standi* (legal standing) and, thirdly that LLS had failed to comply with section 35 of the General Law Amendment Act (Act). Section 35 of the Act applies in those cases where a rule *nisi* is sought against government or other government functionaries and it requires the service of a certain notice on a government or other affected government functionaries.

The Constitutional Court refused to grant leave to appeal against the order of the High Court striking the matter off the roll for lack of urgency, as it agreed with the High Court that the application could have been brought much earlier, but granted leave to appeal

against the costs order that had been granted against LLS. The Court also held that the High Court was wrong to have held that LLS had no standing to bring the application. LLS had claimed to bring the application in the public interest in terms of section 38 (d) of the Constitution but the High Court had held that LLS was not acting genuinely in the public interest. The Constitutional Court held that LLS had been acting genuinely in the public interest. It said that this was clear from the nature of the orders it sought for the residents of Malumelele B Extension 1, Limpopo. This Court held that the High Court had had no proper basis for concluding that LLS was not acting genuinely in the public interest.

With regard to the costs order against LLS, the Constitutional Court held that, as this was constitutional litigation brought against government functionaries, the High Court should have applied the *Biowatch* principle approach to costs and should not have awarded costs.

In the end, the Constitutional Court granted leave to appeal against the costs order of the High Court but dismissed the application for leave to appeal against the order striking the application off the roll, upheld the appeal against the costs order and set it aside. The Court ordered Vhembe District Municipality (the first respondent) to pay the applicant's costs in the Constitutional Court.