



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Limpopo Legal Solutions and Others v Vhembe District Municipality and Others**

**CCT 159/16**

**Date of judgment: 18 May 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 18 May 2017 the Constitutional Court handed down judgment on an application for leave to appeal against an order of the High Court of South Africa, Limpopo Local Division, Thohoyandou. The High Court dismissed an urgent application by Limpopo Legal Solutions and three individual residents of Malamulele brought against Vhembe District Municipality (Vhembe) and others. The applicants sought a final interdict directing the respondents to immediately dispatch a team of contractors to fix burst sewage pipeline(s) in Section B, Malamulele.

Vhembe opposed the application. It said that it became aware of the problem, for the very first time, when the applicants served their urgent application on it. Had the applicants informed it of the burst sewer through the normal channels – including just a simple phone call – the problem would have been attended to within 48 hours.

The High Court dismissed the application. It found that it was inappropriate for the applicants to rush to court without first notifying Vhembe of the problem. The High Court further ordered each of the applicants, organisational and individual, to pay Vhembe's costs, jointly and severally, on a punitive scale as between attorney and client.

Before the Constitutional Court, the applicants challenged the High Court's decision both on the merits and on costs. Vhembe opposed the application. The matter was determined under the Court's Rules without hearing oral argument but after inviting and receiving written submissions from the parties on the High Court's punitive costs orders.

The Constitutional Court found the High Court's decision to dismiss the application on its merits unassailable.

But the Court upheld the appeal on costs. In a unanimous judgment by Cameron J, Mogoeng CJ, Nkabinde ADCJ, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Mojapelo AJ, Pretorius AJ and Zondo J concurring, this Court found that the High Court did not apply the *Biowatch* principle where it should have. This is the principle, established in 2009, that even when a private party seeking to enforce constitutional rights against the state loses, it should not be made to pay the state's costs unless the litigation was vexatious or improper.

Had the High Court applied *Biowatch*, it would have made no costs order, let alone a punitive award. Accordingly, the costs orders against the applicants were set aside. Each party was ordered to pay its own costs in the High Court.

Also on the basis of *Biowatch*, the applicants were entitled to be awarded their costs in the Constitutional Court as they achieved substantial success in overturning the High Court's costs award.