



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Matjhabeng Local Municipality v Eskom Holdings Limited**

### **Shadrack Shivumba Homu Mkhonto v Compensation Solution (Pty) Limited**

**CCT 217/15 and CCT 99/16**

**Date of hearing: 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 at 10h00, the Constitutional Court will hear two consolidated applications for leave to appeal against the decisions of the High Court of South Africa, Free State Division, Bloemfontein (Free State High Court) and Supreme Court of Appeal (SCA), respectively. At the centre of both cases, are the procedural and substantive requirements for contempt of court proceedings.

In the matter of *Matjhabeng Local Municipality v Eskom Holdings Limited (Matjhabeng)* a Municipal Manager, Mr Lepheana, was held to be a contempt of court by the Free State High Court following summary proceedings. In the matter of *Shadrack Shivumba Homu Mkhonto v Compensation Solution (Pty) Ltd (Mkhonto)*, the former Commissioner of the Compensation Fund was held to be in contempt of court by the SCA, thus overturning the decision of the High Court of South Africa, Gauteng Division, Pretoria (Pretoria High Court).

The dispute in *Matjhabeng* involves a settlement agreement between the Municipality and Eskom regarding overdue electricity bills which was made an order of the Free State High Court on 28 March 2013. The order regulated the monthly payments by the Municipality to settle the arrears. Due to non-compliance with this order, a second order followed on 31 July 2014. In terms of this order, certain obligations were imposed on the Municipality and Mr Lepheana as Municipal Manager. A third order was granted on

18 September 2014, including a rule nisi calling upon Mr Lepheana, in his official capacity, to file a report setting out any reasons for non-compliance with the second order.

Mr Lepheana filed an explanatory affidavit setting out the various attempts to settle the dispute. He appeared before the Free State High Court and gave oral evidence under oath and was cross-examined. That Court held that Mr Lepheana's non-compliance was wilful and mala fide, or in bad faith. He was held to have been in contempt of court and was committed to prison for six months which was wholly suspended on condition that he comply with the order.

Mr Lepheana was unsuccessful in his application for leave to appeal to both the Free State High Court and the SCA.

Before the Constitutional Court, the Municipality argues that the process followed in the Free State High Court violated all precepts of fairness and justice. It argues that the hearing had all the features of undesirable summary contempt proceedings denying Mr Lepheana the applicable protections-in civil contempt proceedings. The Municipality asks the Constitutional Court to grant leave to appeal and set aside the decision of the Free State High Court with costs.

Eskom opposes the application. It argues that the order imposed positive obligations on Mr Lepheana as the Municipal Manager and that the procedure followed, although initiated by a rule nisi, was not summary in effect. Eskom submits that Mr Lepheana's conduct urgently called for measures to "nip it in the bud" as it challenged the court of first instance authority to hand down binding orders. Eskom argues that his conduct constituted consent and waiver to both the procedure and the order. It asks this Court to dismiss the application for leave to appeal with costs.

In the matter of *Mkhonto*, Compensation Solution (CS) initially sought certain declaratory orders and a mandamus against the first respondent, the Compensation Commissioner, the Director General of the Department of Labour and the Minister of Labour. Mr Mkhonto was the Compensation Commissioner (Commissioner) at that time. On 31 July 2009 the Pretoria High Court granted an order (by agreement) following unsuccessful efforts to obtain the outstanding payments in respect of medical accounts submitted to the Commissioner. In that order the Commissioner was specifically directed to process medical accounts submitted to him within a reasonable time from the date of submission and within 75 days in respect of the accepted medical claim.

The Commissioner failed to pay within the stipulated period. Following three action proceedings for separate claims, CS launched two successive contempt proceedings against the Commissioner. Both proceedings were settled upon by the Commissioner's undertaking to pay the amounts due. However, in July 2013, CS was forced to institute another application in the Pretoria High Court seeking orders that the Commissioner was in contempt of the order dated 31 July 2009. In the order by agreement dated 18 February 2014, the parties were directed to meet and, among others things, prepare a

joint report in relation to the line items on which an agreement was reached. The report was to be filed by 31 March 2014.

On 11 November 2014 the Pretoria High Court dismissed the contempt applications by CS because payment of the outstanding claims was made before the hearing. The Court held that the order of 31 July 2009 could not be enforced by means of civil contempt proceedings.

CS successfully sought leave to appeal before the SCA and that Court overturned the decision of the Pretoria High Court and declared the Commissioner to be in contempt of paragraphs 1, 2, 5 and 6 of the order of 31 July 2009, as it went beyond requiring the payment of money. The SCA further held that the Commissioner failed to prove reasonable doubt of his wilfulness and mala fide. Accordingly, the Commissioner was held to be in contempt and was committed to undergo three months' imprisonment suspended for a period of five years on condition that he is not convicted of contempt of court within that period. As of the date of the SCA order, Mr Mkhonto had resigned from that position.

In this Court, Mr Mkhonto and the new Commissioner (applicants) seek leave to appeal against the SCA's decision. They submit that all the monetary claims owed to CS had been resolved, Mr Mkhonto is no longer the Commissioner and that he was unable to comply with the terms of the order as it is at variance with the claim process as prescribed in COIDA. The applicants argue that the undisputed facts showed that there was no wilful disregard of the order or mala fide conduct in executing his statutory duties. They submit that even if the SCA was correct on contempt, committal was neither competent nor appropriate. They ask this Court to condone the delay in filing their application, grant leave to appeal and set aside the decision of the SCA.

CS opposes the application and submits that the requirements for contempt were established and that the presumption of mala fide and wilfulness applied unless Mr Mkhonto adduced evidence that created reasonable doubt. It is argued that he failed to adduce such evidence and that he was given the requisite protection contemplated by section 12 of the Bill of Rights.