



CONSTITUTIONAL COURT OF SOUTH AFRICA

Ecclesia De Lange v Presiding Bishop of the Methodist Church of Southern Africa and Another

CCT 223/14

Date of hearing: 28 August 2015

Date of judgment: 24 November 2015

MEDIA SUMMARY

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.

Today the Constitutional Court handed down a judgment concerning the suspension and discontinuation of Ms De Lange as an active minister of the Methodist Church following her announcement of her intended marriage to her same-sex partner.

Shortly after this announcement, the Methodist Church of South Africa, the respondent, informed Ms De Lange, the applicant, that her announcement had breached the Church policy (the Laws and Discipline) which only recognises heterosexual marriages. Ms De Lange was then suspended and subsequently discontinued as a minister in early 2010. In March 2010, Ms De Lange referred the matter to arbitration in terms of the Laws and Discipline of the Church. A standstill arose when the parties could not agree on Ms De Lange's rights in the process. This prompted the arbitration convener to proceed with the process as provided by the Laws and Discipline of the Church. On her behalf, the convener then entered into a final agreement with the Church in May 2011.

In 2012, Ms De Lange approached the Western Cape High Court, Cape Town seeking an order to set aside the arbitration agreement in terms of the Arbitration Act. She also contended that she was unfairly discriminated against. The High Court held that Ms De Lange had not shown good cause to set aside the arbitration agreement. She then appealed to the Supreme Court of Appeal. The majority judgment of that Court agreed with the finding of the High Court. It found that Ms De Lange had disavowed the unfair discrimination claim. The concurring judgment of that Court was of the view that there was no arbitration agreement, for the purposes of Arbitration Act, to set aside.

Before this Court, Ms De Lange conceded that she is in breach of the Church's rule proscribing ministers from entering into same-sex marriages. She argued, however, that the Church's reliance on the rule contravened her right to equality under the Constitution, which prohibits unfair discrimination based on marital status or sexual orientation. Ms De Lange also contended that arbitration was an inappropriate forum for the dispute, in light of her constitutional claims and because the arbitration process was biased and lacked practical effect.

The Church argued that Ms De Lange had disavowed her unfair discrimination claim and could not raise it before this Court. It also contended that the principle of constitutional subsidiarity meant that Ms De Lange should have first brought her discrimination claim in the Equality Court under the Promotion of Equality and Prevention of Unfair Discrimination Act.

In a unanimous judgment written by Moseneke DCJ, the Court made four findings. First, this Court found that Ms De Lange had not shown good cause to set aside the arbitration agreement. Further, the Court stated that because the issue relates to interpretation of religious doctrine, arbitration would be the appropriate forum to examine the Church's application of its rule against same-sex marriages for ministers. Second, the Court found that Ms De Lange had unequivocally disavowed her unfair discrimination claim before the High Court and was not free to raise the claim for the first time on appeal. Third, the Court found that the principle of constitutional subsidiarity applied and meant that Ms De Lange should have first brought her unfair discrimination claim to the Equality Court. Finally, Ms De Lange failed to file a notice in terms of the Uniform Rules of the High Court, an omission which deprived other interested parties including religious communities, of the opportunity to intervene as parties to the dispute or seek admission as *amicus curiae* in the High Court. It accordingly dismissed the appeal.

In a concurring judgment, Van der Westhuizen J contends that this case raises the question of whether there should be a "constitution-free" zone in our constitutional democracy. Van der Westhuizen J held that this Court should not rule on this question as a court of first and last instance and that arbitration should be the first port of call in this matter.