



## CONSTITUTIONAL COURT OF SOUTH AFRICA

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

**CCT 223/14**

**Date of hearing: 28 August 2015**

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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 28 August 2015 at 09h00, the Constitutional Court will hear an application for leave to appeal concerning Ms De Lange's suspension and discontinuation as an active minister of the Methodist Church following her announcement, on 6 December 2009, of her intended marriage to her same-sex partner.

The Church informed Ms De Lange shortly thereafter that her announcement had breached the Laws and Disciplines of the Church, in that Church policy only recognised heterosexual marriages. Ms De Lange was suspended on 10 December 2009 and was discontinued as a minister in February 2010.

On 31 March 2010, Ms De Lange referred the matter to arbitration in terms of the Laws and Disciplines of the Church. The parties were unable to agree on the terms of an arbitration agreement and, as a result, no valid agreement was placed before the arbitrator. The arbitrator then referred the matter back to the Convener in February 2011. Ms De Lange refused to engage further with the arbitration process, citing what she perceived as bias and unfairness. The Convener, acting on Ms De Lange's behalf as provided by the Laws and Disciplines, entered into a final arbitration agreement with the Church in May 2011.

In the High Court, the Church argued that Ms De Lange is bound by the Church's Laws and Disciplines and that she must submit herself to arbitration. Ms De Lange argued that arbitration would be unjust and futile as there had been a long delay in the finalisation of the arbitration agreement, and contended that the conduct of the Church

and the Convener indicated bias. The High Court held that Ms De Lange had not shown good cause to set aside the arbitration agreement, and that the issues to be referred to arbitration would be wide enough to address any of her concerns.

Ms De Lange appealed to the Supreme Court of Appeal. The Court unanimously dismissed the appeal by way of two separate judgments, one by Ponnann JA and a concurrence by Wallis JA. The core issue before the Court was whether the Church had adopted a rule that precluded Ms De Lange from announcing to the congregants her intention to marry her same-sex partner. Ponnann JA found that a valid arbitration agreement had been concluded between Ms De Lange and the Church, and that the parties were bound thereby. Ponnann JA held that Ms De Lange had not discharged the onus of showing good cause to avoid arbitration in terms of section 3(2) of the Arbitration Act. It was further held that arbitration was the ideal dispute resolution mechanism to resolve a religiously sensitive dispute such as this.

Wallis JA disposed of the appeal on the basis of whether the alleged arbitration agreement should be set aside or avoided. Based on the nature of the relationship between the Church and its ordained ministers, Wallis JA expressed deep reservations about finding an arbitration agreement between Ms De Lange and the Church. Wallis JA also questioned whether this matter fell within the ambit of the Arbitration Act as section 2 precludes the arbitration of matters relating to status. Wallis JA held that the Church and its ministers do not have a contractual relationship, but rather one that flows from a divine calling. Even so, the only way that an arbitration agreement could have been created between Ms De Lange and the Church is if they had agreed to the terms of the agreement, which was not the case. Wallis JA concluded that this matter should be removed from the judicial secular arena, and rather be resolved in accordance with the Church's Laws and Disciplines.

Ms De Lange's constitutional challenge is based on the contentious issue of whether the Church has a policy disqualifying ministers who have entered into same-sex civil unions from playing an active role in the Church. Absent such a policy, or by reason of the ambiguity of such a policy, Ms De Lange contends that, in terms of section 9 of the Constitution, she has been unfairly discriminated against based on her sexual orientation and marital status. Due to the constitutional rights at issue, Ms De Lange regards this Court, and not the arbitration process, to be the appropriate forum for relief. Ms De Lange seeks an order in this Court regarding the balancing of fundamental constitutional rights concerning her right to equality and the Church's rights to freedom of religion and freedom of association.

The Church contends that Ms De Lange's claim is subject to arbitration in terms of the Church's rules. In addition, the Church submits that the Equality Court is best suited to hear the unfair discrimination matter in accordance with the Promotion of Equality and Unfair Discrimination Act. Finally, the Church argues that the discrimination against Ms De Lange is justified as the Church is entitled, in terms of sections 15 and 18 of the Constitution, to require its ministers not to enter into any marriage or civil union other than a heterosexual one.