



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Niekara Harriellal and University of KwaZulu-Natal**

**CCT 100/17**

**Date of Judgment: 31 October 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.*

At 10h00 on 31 October 2017, the Constitutional Court handed down judgment in an application for leave to appeal against an order of the Supreme Court of Appeal upholding the decision of the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg (High Court), dismissing the applicant’s review application against the University of KwaZulu-Natal (UKZN).

The applicant, who aspires to be a doctor, applied in 2015 for admission to the MBChB programme at UKZN. She was unsuccessful. She subsequently studied for the degree of Bachelor of Medical Science (Anatomy). This was taken on in the hope of improving her prospects for admission to the MBChB programme the following year. In 2016, she applied again under UKZN’s “mature students” policy. Again, her application was unsuccessful.

Aggrieved by the decision, the applicant launched a review application in the High Court to set aside the decision not to award her a place in the MBChB programme. UKZN opposed the application, stating that she had been considered alongside 160 other applicants under the “mature students” policy and that she was not among the top ten who were ultimately awarded places. The High Court agreed with the University and therefore dismissed the review application with costs. The applicant applied to the Supreme Court of Appeal for leave to appeal against that decision; that Court dismissed her application with costs.

In this Court, the parties were directed to file written submissions regarding the issue of costs. No oral argument was heard in this matter.

On the substance of the appeal, this Court held that the admissions policy was correctly applied to the applicant’s request for admission. The applicant was unsuccessful because

she was competing against candidates who were more qualified than her and thus scored higher in terms of the admission requirements.

On the issue of costs, however, the Court held that the *Biowatch* principle ought to have been applied. This principle requires that an unsuccessful party in proceedings against the state be spared from paying the state's costs in constitutional matters. The principle applies in every constitutional matter involving the state in order to prevent the chilling effect that adverse costs orders might have on litigation concerning constitutional rights. The University is a public institution through which the state discharges its constitutional obligation to make access to further education realisable. Accordingly, the High Court and the Supreme Court of Appeal should have applied the *Biowatch* principle and not awarded costs against the applicant.