

JOHAN GEORG DORMEHL versus THE MINISTER OF JUSTICE (first respondent) THE REGISTRAR OF COMPANIES (second respondent) CHAIRMAN OF THE JUSTICE SUB COMMITTEE (third respondent) MR JUSTICE J P ROUX (fourth respondent) THE JUSTICE AND PEACE CATHOLIC CHURCH, PRETORIA (fifth respondent)

EXPLANATORY NOTE

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the court.

This case deals with direct access to the Constitutional Court. In terms of the rules of court, the applicant sought direct access to court but the application contained several formal and procedural defects. However, since the applicant was not represented by a lawyer, the court ignored the formal defects of the application.

The applicant requested direct access to court to argue the following:

- (a) That Rule 17 of the court rules, requiring him to obtain leave of the Constitutional Court in order to approach it directly was unconstitutional;
- (b) that rules requiring corporations to be represented by legal practitioners in legal proceedings before superior courts were unconstitutional; and
- (c) that court provisions requiring security for costs and the obtaining of leave to appeal were also unconstitutional.

He also requested that this court order a judge in the High Court - the fourth respondent - to sign a written judgment in a matter in which the judge had given oral judgment two years previously.

A unanimous court held that the applicant had not established that he should be granted direct access to the court in this matter. The Court referred to previous judgments concerning direct access and re-emphasised that direct access should only be granted in rare circumstances because it was undesirable for the court to act as a court of first and last instance without there being any possibility of appeal. Hence in terms of Rule 17 (5) of the rules of court, the court dismissed the application without hearing oral argument on the matter.

The court rejected the contention that the need to obtain leave to approach the Constitutional Court directly limited the right of access to courts enshrined in section 34 of the Constitution. It observed that the requirement of leave to approach the Constitutional Court directly is sanctioned by the Constitution itself and that section 34 does not grant a litigant the right to approach any court at any time, but only the right to approach a competent court. The High Court was competent to hear constitutional matters.

The court also indicated that Rule 17 granted litigants the right to approach the court directly where necessary. The court noted that several cases had held that there were

good reasons for limiting the direct access to the Constitutional Court. These cases revealed that the Constitutional Court acted as a court of first instance only in limited circumstances where the interests of justice required it to do so. Compelling reasons had to exist for direct access to be granted. The Court concluded that such reasons were not present in this case.