



CONSTITUTIONAL COURT OF SOUTH AFRICA

South African Revenue Services v The Commission for Conciliation, Mediation and Arbitration and Others

CCT 19/16

Date of hearing: 11 August 2016

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.

On Thursday 11 August 2016 at 10h00, the Constitutional Court will hear an application for leave to appeal against the judgment and order of the Labour Appeal Court.

Mr Kruger, an employee of South African Revenue Services (SARS) called his team leader Mr Mboweni a kaffir on two occasions. This was confirmed by one of the employees at SARS. A disciplinary hearing was convened and the charges preferred against him were gross insubordination and the use of derogatory and abusive language against Mr Mboweni. Mr Kruger pleaded guilty. The chairperson found him guilty as charged and imposed a sanction of a final written warning valid for 6 months, suspension without pay for 10 days and referred him for counselling. Dissatisfied with that outcome, the Commissioner of SARS (Commissioner) altered the sanction to a dismissal without a hearing.

Mr Kruger challenged the dismissal at the Commission for Conciliation, Mediation and Arbitration (CCMA), on the basis that the dismissal was substantively and procedurally unfair. He further that the Commissioner did not have the powers to the sanction of the chairperson with dismissal. SARS argued that because it is entrusted with the responsibility to collect tax from the public, the offence was very serious and it would raise eyebrows if he were to receive a mere final written warning. The CCMA decided in favour of Mr Kruger and ordered SARS to reinstate him subject to the above conditions. Aggrieved by that decision, SARS approached the Labour Court.

In the Labour Court, SARS argued that reinstatement was inappropriate because it could not be expected to retain an employee who had lost their trust and confidence because of his insubordinate racist, derogatory and abusive conduct.

Mr Kruger argued that SARS did not have any form of discretion to deviate from the chairperson's sanction. Also, that the award by the CCMA was reasonable as SARS acted

ultra vires(*beyond the powers*) since there was no justification for the deviation from its own policies and procedures, including the collective agreement. The Labour Court decided in favour of Mr Kruger. Aggrieved by that outcome, SARS appealed unsuccessfully to the Labour Appeal Court.

In this Court, SARS submits that this application raises a constitutional issue and that it is in the interests of justice to grant leave because termination of an employment contract for racism in the public sector is an important constitutional matter. It also says that there are reasonable prospects of success on appeal.

Mr Kruger argues that the appeal should be dismissed because:(i) SARS had waived its right to appeal; (ii) the application for appeal does not raise a constitutional issue or other connected matter and (iii) it would not be in the interests of justice to grant leave to appeal as there are no prospects of success.