



CONSTITUTIONAL COURT OF SOUTH AFRICA

*CCT 54/22 Afrocentrics Projects and Services (Pty) Limited t/a Innovative Distribution
v State Information Technology Agency Soc Limited and Others*

CCT 54/22

Date of Judgment: 24 January 2023

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 24 January 2023 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against the judgment and order of the High Court of South Africa, Gauteng Division, Pretoria. The application was brought by Afrocentrics Projects and Services (Pty) Limited t/a Innovative Distribution (Afrocentrics), and concerns the interpretation and application of rule 30 of the Uniform Rules of Court by the High Court (Rules).

The State Information Technology Agency and Micro Focus Software (Ireland) Limited (Micro Focus) concluded a procurement agreement (SITA agreement) with the purpose of procuring information and communications technology software and related services for organs of state. Axiz (Pty) Limited (Axiz) was appointed as a Fulfilment Agent with the mandate of assisting organs of state with their administration, orders, and payments. Axiz was entitled to appoint additional Fulfilment Agents and appointed Afrocentrics as such. The appointment was governed by the terms of a Fulfilment Agent agreement. In addition, Afrocentrics entered into a Partner agreement with Micro Focus in order to have access to relevant information required to fulfil its obligations in terms of the SITA agreement.

this matter arose from Micro Focus Software (Ireland) Limited's (Micro Focus) purported termination of a Fulfilment Agent agreement and Partner agreement entered into with Afrocentrics. Following the purported termination, Afrocentrics approached the High Court for an order, amongst others, setting aside the purported termination (main application). In response thereto, Micro Focus applied to the Court in terms of rules 30(1), 30A, and 6(11) of the Rules to have aspects of the main application set aside for allegedly

being irregular and non-compliant with the Rules (rule 30 application). After dealing with most of the issues and making a number of conclusions in the judgment, the High Court made an order in the following terms: “(1) [Afrocentrics’s] main application is irregular and improper; (2) [Afrocentrics] to pay the costs of the application inclusive of the costs of two counsel” (High Court order). Aggrieved by the decision, Afrocentrics applied for leave to appeal, which was refused by the High Court. Following which, it petitioned the Supreme Court of Appeal, which application suffered a similar fate. Afrocentrics then approached this Court for leave to appeal against the judgment and order of the High Court.

In its application for leave to appeal, Afrocentrics argued that the order of the High Court on the rule 30 interlocutory application had a final and definitive effect on the main application, ultimately setting it aside in its entirety. Afrocentrics submitted that this was irregular and that the High Court had impermissibly adjudicated matters of substance in dealing with the rule 30 application.

After considering the application, the Constitutional Court issued directions to the parties for the delivery of submissions on, amongst others, the following issues: (a) whether the High Court order set aside the main application or (b) whether it failed to decide the rule 30 application by not explicitly stating, in its order, whether and to what extent the alleged irregular proceeding was set aside. In their written submissions, Afrocentrics argued that the High Court intended to set aside the main application. Micro Focus, on the other hand, contended that the High Court failed to explicitly set aside the main application.

The matter was decided without an oral hearing. In a unanimous judgment penned by Kollapen J, the Court found that its constitutional jurisdiction was engaged, there were reasonable prospects of success, and the interests of justice would benefit from providing the necessary clarity relating to the proper adjudication of rule 30 applications.

On the merits, the Court held that the High Court did not make an order contemplated in terms of rule 30. The Court held further that the order of the High Court order was ambiguous and incomplete. The order simply declared the proceedings to be irregular. The order is silent on whether the proceedings were set aside, whether there was leave to amend or what was to happen following the finding of irregularity.

The Constitutional Court held that rule 30(3) contemplates a two-stage process. First, a court must be satisfied that the proceeding or step is irregular or improper. Second, the court is required to make an order. The Court held that rule 30 confers wide powers on a court hearing a rule 30 application. This is particularly evident from the nature of the relief that a court is empowered to make. A court, for example, is empowered to set aside the proceeding in its entirety or in part, grant leave to amend or make any order as it deems fit.

Turning to the order made by the High Court, the Court briefly set out the duty imposed on courts in legal proceedings and orders made in said proceedings. The Court held that a court order is required to bring a level of certainty to the proceedings and directions issued by a court must be in the concluding order, not contained in the judgment. Furthermore, in disposing of a matter before it, a court must act in accordance with its powers – which

is what provides the certainty and finality that parties seek when they raise a dispute before a court. The right of access to courts in section 34 of the Constitution is a right to have a justiciable dispute *decided* by a court. While a judgment may give insight into how the court has navigated the disputed issues before it, it is ultimately the order that brings finality and says to the parties what is required of them or declares what their rights are. This was absent from the order of the High Court.

In the premises, the Constitutional Court granted leave to appeal, set aside the High Court's rule 30 order and remitted the matter to the High Court. The Court made no order as to costs, both in this Court and in the Supreme Court of Appeal.