CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Justice and Correctional Services and Others v Ntuli

CCT 322/23
Date of judgment: 30 April 2025

MEDIA SUMMARY

On 30 April 2025, at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal challenging the Supreme Court of Appeal's declaration of constitutional invalidity of a policy emanating from a statute.

This case concerned the constitutional validity of a blanket ban imposed by the Department of Correctional Services (Department) on the possession and use of computers by inmates in their cells in correctional centres. The blanket ban emanates from a Departmental policy, the Policy Procedures on Formal Education Programmes (Policy) which regulates the use of computers by inmates who have registered for studies and require the use of a computer. The Policy was approved by the Acting Commissioner for Correctional Services on 8 February 2007.

The first to third applicants are the Minister of Justice and Correctional Services, National Commissioner of Correctional Services, and the Head of Correctional Centre, Johannesburg Medium "C" (Medium C). The respondent is Mr Mbalenhle Sydney Ntuli. The Judicial Inspectorate for Correctional Services (JICS) was admitted as amicus curiae.

At the time of the High Court application, the respondent was an inmate at Medium C where he is serving a 20-year imprisonment sentence. At that time, he was registered with

the Oxbridge Academy to pursue computer studies with a focus on data processing. The respondent has since passed and graduated. During the time that he was studying he had required the use of a computer for his course.

The High Court held that the Policy was unconstitutional as it infringed the right to further education in section 29(1)(b) of the Constitution. That Court held further that the Policy constituted unfair discrimination between inmates and the general public and also between inmates at Medium C and other inmates, in violation of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA). An appeal to the Supreme Court of Appeal, with its leave, was only partially successful. That Court held that the High Court Judge had no power to make an order declaring that the Policy constitutes unfair discrimination in terms of PEPUDA, and it set aside that order. Regarding the constitutionality challenge, the Supreme Court of Appeal agreed with the High Court and held that the outright prohibition of the Policy, that excludes a prisoner from using a personal computer in his cell to study, was an infringement of the respondent's right to pursue his further education, and was thus an infringement of section 29(1)(b) of the Constitution.

Before this Court, the applicants submitted that the central question was whether prohibiting a convicted prisoner from using a personal computer in a prison cell for study purposes is a violation of the right to further education, enshrined in section 29(1)(b) of the Constitution. According to the applicants, the respondent was not being divested of his right to further education, nor was that right being infringed; it was purely being regulated in a reasonable manner under the circumstances imposed on offenders.

The respondent's case in the main was that the Policy is inconsistent with the Constitution on various grounds – first, that the Policy is an unjustifiable limitation of the right to further education; and second, that it unjustifiably limits the constitutional rights to conditions of detention consistent with human dignity, including access to reading material, in terms of section 35(2)(e) of the Constitution, and human dignity in terms of section 10 of the Constitution. It also transgresses the prohibition on unfair discrimination in section 9(3)

and PEPUDA. And, lastly, that the Policy is inconsistent with the principle of legality embedded in the rule of law in that it is *ultra vires* (beyond legal authority) and irrational.

The JICS was admitted as amicus curiae (friend of the court) and was permitted to present written and oral arguments. The JICS made useful submissions about the role that education plays in the wellbeing of inmates; the limitation placed by the Policy on the respondent's right to further education and access to reading materials; the failure of the state, through the impugned Policy, to comply with its obligation not to interfere with or diminish the respondent's enjoyment and exercise of the right to further education; and, lastly, South Africa's obligations under international law.

In a unanimous judgment penned by Majiedt J (with Madlanga ADCJ, Kollapen J, Mhlantla J, Rogers J, Seegobin AJ, Theron J, Tolmay AJ and Tshiqi J concurring) the Court held that the blanket prohibition on personal computers in inmates' cells infringes the right to education, because inmates cannot access reading material for their studies and complete educational tasks when they are in their cells. The Court held that the right to further education enshrined under section 29(1)(b) of the Constitution plainly encompasses access to textbooks and other tools necessary for fulfilling the right, including electronic tools. The Court found that to be effective, education must include adequate learning resources. This is true both inside and outside prison. Learning resources include textbooks, writing materials and, given the rapid evolution in the digital age, the availability of technological tools like computers for e-learning.

The Court held that a prisoner enjoys the rights the Constitution extends to all persons and those specifically given to every sentenced prisoner (section 35(2)), unless these rights are limited by a law of general application in terms of section 36. The Court held that the applicants failed to adduce the evidence necessary to justify the limitation of inmates' right to further education.

For the reasons stated above, the Court confirmed the order of constitutional invalidity made by the Supreme Court of Appeal. Prior to giving its order, the Court underscored that this case is concerned only with the rights of prisoners to personal computers for educational purposes. Nothing in the judgment should be regarded as expressing any view on the justifiability of restrictions on the use of personal computers in cells for any other purposes.

The Court made the following order:

1. The order of constitutional invalidity made by the Supreme Court of Appeal is confirmed.
2. The Policy Procedure Directorate Formal Education, as approved by the second applicant and dated 8 February 2007, is unconstitutional and invalid to the extent that it prohibits the use of personal computers in cells for purposes of further education in circumstances where such use is reasonably required for such further education, and is set aside.
3. The order of constitutional invalidity is suspended for 12 months from the date of this order.
4. The second applicant is directed, within 12 months from the date of this order, to prepare and promulgate a revised policy consistent with the principles laid down in this judgment (revised policy).
5. The second applicant is directed, within one week after promulgating the revised policy, to disseminate that policy to the head of every correctional centre, and, where one is employed, to the head of education at each centre.
6. Notice of the revised policy must be posted on notice boards in all prisons where prisoners customarily receive information, and such notice must set out where prisoners may obtain copies of the revised policy.
7. Pending the revision of the policy:
    (a) Any inmate in a correctional centre registered as a student with a recognised tertiary or further educational institution and who reasonably needs a computer to support their studies, and any

student who has registered for a course of study that reasonably requires a computer as a compulsory part of the course, is entitled to use their personal computer without the use of a modem in their cell.

(b) Any registered student who keeps a personal computer in their cell in accordance with paragraph 7(a) above must make it available for inspection at any given time by the head of the correctional centre or any representative of the second applicant.

(c) In the event of a breach of the rules relating to the use by an inmate of their computer in their cell, the head of the correctional services centre may, after considering any representations the inmate may make, direct that the inmate may not use their computer in their cell.

8. The first and second applicants are ordered to pay, jointly and severally, the costs of this application, the costs in the Supreme Court of Appeal and the High Court, including in all instances the costs of two counsel, where so employed.