



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development (20781/2014) [2015] ZASCA 206 (4 December 2015)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by the National Society for the Prevention of Cruelty to Animals (the appellant) and upheld the order of the Gauteng Division of the High Court, Pretoria. The issue before the SCA was whether s 7(1)(a) of the Criminal Procedure Act (CPA) which allows only a private person to institute a private prosecution, and not a juristic person, flouts the provisions of the Constitution. The Gauteng Division of the High Court, Pretoria, (Fourie J), had dismissed an application by the appellant against the first respondent, the Minister of Justice and Constitutional Development (the Minister), and the second respondent, the National Director of Public Prosecutions (the NDPP), to declare the provisions of s 7(1)(a) of the CPA invalid and unconstitutional to the extent that they prohibit juristic persons from instituting and conducting private prosecutions merely because they are not private persons. The respondents did not oppose the application in the court below. They, however, filed 'explanatory affidavits' and made submissions similar to that of an amicus.

The basis of the constitutional challenge against s7(1)(a) of the CPA was that it differentiated between natural persons on one hand and juristic persons on the other hand, and that there was no good reason for differentiating between the two classes of persons. As a result, the differentiation fails to serve a legitimate governmental purpose and is therefore irrational and non-compliant with the rule of law as a standard in s 1(c) of the Constitution. Further, the differentiation fails to render both natural and juristic persons equal before the law.

The SCA, in rejecting the arguments of the appellant, held (i) that regulation of private prosecutions is a legitimate governmental purpose, (ii) there is an acceptable reason for the limitation of private prosecutions as contained in s 7(1)(a), which reason is found within the context of the whole of s 7 and s 8 of the CPA, s 179 of the Constitution and the provisions of the NPA Act, (iii) all decisions by the prosecuting authority to prosecute or not to prosecute must be taken impartially, without fear, favour or prejudice. They must also adhere to prosecuting policy and policy directives. Accordingly, the aim of prosecuting policy and policy directives must be to serve the interests of justice for the benefit of the public in general. And decisions to prosecute or not to prosecute may be reviewed, either by the NDPP under the NPA Act or by the courts under the rule of law. It followed that a decision of the prosecuting authority not to prosecute, which is a prerequisite for a private prosecution in terms of s 7(1) of the CPA, must be made for a good reason. Against this background the conclusion that private prosecutions should be limited to exceptional cases as envisaged in subsections 7(1)(a) and 8 of the CPA, cannot be faulted. The effect of s 7(1) of the CPA is to permit private prosecutions only where private and personal interests are at stake. Finally, private prosecutions in terms of s 7 of the CPA are only permitted on grounds of a direct infringement of human dignity and this was the reason for the existence of s 7(1)(a) of the CPA and for the exclusion of juristic persons other than those permitted in s 8 to institute private prosecutions. Human dignity is a foundational value of our Constitution.

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