



CONSTITUTIONAL COURT OF SOUTH AFRICA

Hotz and Others v University of Cape Town

CCT 280/16

Date of judgment: 12 April 2017

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 12 April 2017, the Constitutional Court handed down judgment in an application for leave to appeal against the decision of the Supreme Court of Appeal (SCA) upholding a final interdict against five protesters who had participated in the so-called “Shackville” protest at the University of Cape Town (UCT), as part of the national #FeesMustFall movement.

The “Shackville” protest primarily concerned the difficulties experienced by many students, predominantly black students, in paying study fees and finding suitable student accommodation. A group of protesters erected a shack on UCT’s premises in the middle of Residence Road. The protesters painted slogans on the War Memorial at the campus and then portraits and paintings were removed from the buildings and were burnt. Roads into and around the campus were blockaded. Attempts by the University management to move the protests to another location failed.

UCT launched an urgent application in the High Court of South Africa, Western Cape Division, Cape Town (High Court) when it received a threat of arson directed at the University’s buildings. It obtained an interim interdict against several protestors, some registered students and others not. On the return date, the High Court made the interim interdict final. In addition to granting the final interdict against those protesters, the High Court ordered them to pay UCT’s costs jointly and severally, including the costs of two counsel. On appeal, the SCA dealt with the law on the granting of a final interdict. It then confirmed the High Court’s order on the merits after narrowing the terms of the final interdict granted by the High Court. The SCA held that the applicants were partly

successful. It confirmed the High Court's costs order. Each party was ordered to pay its own costs in the SCA.

Before the Constitutional Court, the applicants challenged the SCA's decision on the merits regarding the granting of the final interdict. The applicants also attacked the SCA's decision on costs. UCT opposed the application contending that the matter did not implicate this Court's jurisdiction and lacked prospects of success. In terms of the Constitutional Court Rules, the matter was determined without written submission on the merits and without hearing oral argument. The written submissions filed were confined solely to whether the High Court exercised its discretion judicially in granting costs against the applicants.

In a unanimous judgment penned by Nkabinde ADCJ, the Constitutional Court upheld the appeal only against the order of the SCA upholding the High Court's order on costs, primarily on the basis that the High Court failed to exercise its discretion judicially in mulcting the applicants with costs, which entitled this Court to interfere. Accordingly, the costs order of the High Court against the applicants, confirmed by the SCA, was set aside and each party was ordered to pay its own costs in the High Court, the SCA and the Constitutional Court.