

SOUTH AFRICA / JUDGMENT

Freedom Under Law v Motata (33227/2020) [2021] ZAGPPHC 14 (28 January 2021) [2021] ZAGPPHC 14

COURT

North Gauteng High Court, Pretoria

BEFORE

D Mlambo

CASE / FILE NUMBER

33227/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

28

January 2021

Case No: 33227/2020

In the matter between:

FREEDOM UNDER
LAW
Applicant
and
JUDGE NKOLA JOHN
MOTATA
Respondent

Summary:

Interpretation of statutes – Applicant seeks declaratory orders that section 47(1) of the Superior Courts Act 10 of 2013 does not apply to retired Judges and that the term ‘civil proceedings’ does not relate to review applications instituted against regulatory bodies such as the Judicial Services Commission (JSC) but not against Judges even if they have an interest in the matter – alternative relief is for consent to be granted in terms of the section to cite a retired Judge – meaning and purpose of section 47(1) restated – doctrine of leave to sue applies with equal force to retired Judges -- case by case approach required when consent requested -- Retired judges continue to feature in judicial functions and activities - the safety net of section 47(1) is largely aimed at protecting judicial independence – test is whether good cause has been shown.

JUDGMENT

MLAMBO JP

Introduction

[1] This is an application seeking my consent in terms of section 47(1) of the Superior Courts Act 10 of 2013 (“the Act”),

to cite the respondent, a retired Judge, in a review application the applicant has instituted against the Judicial Services Commission

(hereinafter referred to as "the JSC"). In that application the applicant seeks to review and set aside the decision of the JSC dated 10 October 2019, in which the respondent was found guilty of misconduct instead of gross misconduct. In the application before me the applicant seeks an order:

1.1 declaring that section 47(1) of the Act does not require a litigant to obtain consent to institute civil proceedings against Judges retired from active service.

1.2 declaring that section 47(1) of the Act does not require a litigant to obtain consent to institute civil proceedings against Judges where the civil proceedings are instituted against the Judicial Service Commission and the Judge is an interested party.

1.3 declaring that no consent was required in respect of the review proceedings instituted by the applicant, citing the respondent, in the Gauteng Local Division of the High Court under case number 17374/2020 (hereinafter referred to as “the July review proceedings”).

1.4 in the alternative to paragraphs 1 to 3 above, granting the applicant the consent of the Honourable Judge President of the Gauteng

Division, Pretoria, in terms of the Act to cite the respondent as a party to the July review proceedings, alternatively, proceedings,

inter alia, to review and set aside the decision of the JSC dated 10 October 2019 and seek further relief in this regard.

1.5 ordering the respondent to pay the costs of this application, including the costs of two counsel, only if the respondent opposes the relief sought herein; and

1.6 granting further and/or alternative relief as the Honourable Court may deem meet.

The Parties

- [2] The applicant is Freedom Under Law (RF) NPC (hereinafter referred to as “FUL”), a non-profit company. FUL seeks the Judge President’s consent in terms of section 47(1) of the Act in so far as it may be necessary to cite the respondent in the review proceedings.
- [3] The respondent is Judge Nkola Motata, a retired Judge of the High Court of South Africa, formerly in active service in the Gauteng Division of the High Court, Pretoria.

Background

- [4] On 10 October 2019, the JSC dismissed the Judicial Conduct Tribunal’s recommendation that the respondent’s conduct amounted to gross misconduct and that the JSC invoke section 177(1)(a) of the Constitution. The JSC found that the respondent was not guilty of gross misconduct, but rather guilty of the offence of misconduct. Further, as a sanction for the respondent’s misconduct, the JSC imposed a fine of R1,152,650.40 to be paid by the respondent to the South African Judicial Education Institute.
- [5] The JSC’s finding is the outcome of the disciplinary process followed by the JSC in response to complaints lodged against the respondent that had been submitted to the JSC, and was made in terms of sections 20(5)(b) and 17(8)(g) of the Judicial Service Act.
- [6] On 11 May 2020, FUL’s lawyers wrote to my office to request consent to cite the respondent in the review proceedings in terms of section 47(1) of the Act. In the letter, FUL’s Lawyers indicated that:

1.7 The review proceedings seek relief against the JSC and not the respondent. FUL however wishes to cite the respondent as the second

respondent in the review proceedings by virtue of any interest which he may have in the proceedings.

1.8 It was submitted that FUL has a meritorious case that demands adjudication and that it would be fair, just and equitable for the

respondent to be a party to the review proceedings.

[7] On 18 May 2020, the respondent's Lawyers, S Ngomane Inc. Attorneys sent a letter to my office setting out the respondent's

responses to the applicant's letter dated 11 May 2020. The respondent's Lawyers indicated that:

7.1 Given that the review proceedings are aimed at setting aside the JSC's decision, the JSC has an academic interest in the matter and the respondent has a direct and substantial interest in the outcome of the proceedings. The respondent must therefore participate in the proceedings or oppose them.

7.2 The respondent has been complying with the JSC's decision in that the emoluments have begun and are continuing. In light of this, the respondent would be severely prejudiced by the applicant's institution of the review proceedings.

7.3 The respondent has had to bear the costs of various litigious processes that took place from the inception of the matter until the

conclusion

thereof by the JSC, which occurred after his retirement. Further litigation would be detrimental to the respondent's health.

[8] On 17 June 2020, I responded to FUL's Lawyers' letter and advised that in light of the fact that Judge Motata is a retired Judge and that, purely based on the correspondence at my disposal, I was unpersuaded that the applicant had shown good cause to cite the respondent. I, however, invited FUL to formally apply for my consent and advance submissions in this regard. I further directed that should FUL indeed lodge the said application, that it file a copy of the application at the Deputy Judge

President's office at the Gauteng Division of the High Court, Pretoria.

[9] On 27 July 2020, FUL filed this application. The respondent has not opposed this application but has filed an affidavit to assist the court. On 16 September 2020, the respondent

delivered a notice of intention to abide the decision of this Court.

[10] In *N v Lukoto*[1], Ngoepe JP had the opportunity to deal with an application brought in terms of section 25(1) of the now repealed Supreme Court Act 59 of 1959 (hereinafter referred to as the old act), which is the precursor to section 47(1) and held that such an application is to be brought to the Judge President heading the Division in which the Judge concerned has been appointed.

[11] Section 25 (1) of the Old Act and now section 47 (1) are provisions in which is embedded the doctrine of leave to sue in so far as Judges are concerned. This doctrine constitutes a procedural mechanism ordaining, as Ngoepe JP found in *Lukoto*, that anyone desiring to cite a Judge in Court proceedings must obtain the consent of the Judge President of the Court in

which the Judge sought to be cited was appointed. It is a mechanism designed for the protection of Judges against non meritorious lawsuits. It is thus a mechanism for sparing Judges from the nuisance of having to deal with frivolous litigation instituted against them.

- [12] In *Soller v President of the Republic of South Africa*[2] Ngoepe JP characterized this principle as follows – “Broadly, the purpose thereof is to ensure the independence of the Judiciary. The oath which Judges take upon assumption of office requires of them to adjudicate matters fearlessly. This they can only do if protected against non-meritorious actions. Judges should not, in the execution of their judicial functions be inhibited by fear of being dragged to Court unnecessarily over their judgements. Such a threat could have a chilling effect on the execution of their duties.... Furthermore, Judges should rather spend time hearing matters than defending themselves against endless unfounded civil claims. The very nature of the duty of a Judge is such that it would open them to such litigation: a Judge’s task is to resolve disputes, inevitably leaving one person or the other dissatisfied; moreover, they are, in the process, required to make findings on the credibility, honesty and integrity of witnesses and litigants and to justify those findings.”

- [13] This Court in *Engelbrecht v Khumalo, In re: Tarloy Properties (Pty) Ltd v Engelbrecht*[3] matter affirmed this principle when it held that:

“Section 47(1) is the mechanism through which the institution of legal proceedings against Judges is regulated and plays what I regard as a gate keeping role. In essence the section seeks to insulate Judges from unwarranted and ill-conceived legal proceedings aimed at them. The need to protect Judges from unwanted litigation is not difficult to fathom. The core function of Judges is the adjudication of disputes involving competing interests daily. The judgements they hand down as well as the statements they make in court and in their judgements invariably displease some litigants and sometimes their legal representatives.”

- [14] For leave to be obtained good cause would have to be shown for an application to cite a Judge. This Court in *Engelbrecht*[4] cited with approval the Judgment of *Torwood Properties (Pty) Ltd vs South African Reserve Bank* that the test for good cause is not all-embracing but is case specific. There the Court held that:

"The test is no different regarding matters where consent is sought, as is the case in this matter, to institute legal proceedings against a Judge. In this context a court would consider whether on the facts before it an arguable case calling for an answer, by the Judge, is made out and whether it is fair, just and equitable between the parties to grant or refuse consent. Simply put the issue is whether the proceedings, for which consent to litigate against a Judge is sought, contains a justiciable issue."

- [15] In terms of section 47(1), leave to sue must be obtained regardless of whether the matter relates to a Judge's judicial functions, activities or private affairs[5]. The claimant however loses his or her right to sue if the lawsuit is meritless[6] in that consent will not be granted. Support for maintaining the insulation and thus protection of Judges from meritless lawsuits is advanced, amongst others, by McCreath and Koen[7] as follows:

"Perforce, therefore, we need the doctrine of leave to sue in order to warrant that judges do not become sitting ducks for wrongly aggrieved or opportunistic claimants and to ensure that judicial resources are not expended unnecessarily upon the adjudication of their claims... Meritless suits against judges do violence to the status which our society, rightly or wrongly, has bestowed upon them. If countenanced, they place at risk the proper functioning of the judicial office. Needless to say - and no judge will demur - the rule of law demands that judges whose non-judicial behaviour causes damage not be shielded by the majesty of the judicial office. The judge who has gone off the rails of his or her office has to join the ranks of regular people, temporarily at least. However, meritless allegations ought not to trigger litigation which probably will cause damage to the judicial office itself."

- [16] The declaratory relief sought by FUL in the first place is that Section 47(1) does not require a litigant to obtain consent to institute proceedings against retired Judges. FUL relies predominantly on the Judgement of my brother, Mbenenge JP of the Eastern Cape Division in his judgement in NP v LP[8]. In that decision Mbenenge JP concluded that section 47(1) does not apply to retired Judges. It is important to point out that Section 47(1) does not draw a distinction between active and retired Judges. This, according to FUL is no bar to the declaratory order it seeks and argued that Mbenenge JP in NP v LP[9], held that section 47(1) is "apposite in the situation of a judge in active service, and not one who no longer discharges judicial functions". FUL further argued that Mbenenge JP's interpretation of the section took into account the reference in section 47(1) to "any judge of a Superior Court". The argument by FUL was further that when Mbenenge JP noted that the section could be construed to refer to retired Judges and those still in active service, he opted for the narrower meaning in the light of the purpose of the Act that the section only apply to Judges still in active service i.e. for the protection of the independence and proper functioning of the judiciary.
- [17] This is the basis of FUL's reliance on NP v LP that the first declaratory order it seeks should be granted. Essentially, the import of FUL's argument, based on the reasoning and conclusion arrived at in the NP v LP matter, is that retired Judges no longer enjoy the protection of section 47 (1) as they no longer render Judicial functions, so to speak. The absence of the protection of the section poses no threat, so the argument went, to the independence and proper functioning of the judiciary. In other words the doctrine of leave to sue as articulated by section 47 (1) does not apply or if it does, applies with less if any stringency, when it comes to retired Judges. I will show in the following paragraphs that, given the correct context, the conclusion in LP vs NP does not provide authority for the order sought by FUL. In fact Mbenenge JP cautioned that context remained relevant.

[18] Section 25(1) of the Old Act provided that:

“Notwithstanding anything to the contrary in any law contained, no summons or subpoena against the Chief Justice, a judge of appeal or any other judge of the Supreme Court shall in any civil action be issued out of any court except with the consent of that court: Provided that no such summons or subpoena shall be issued out of an inferior court unless the provincial division which has jurisdiction to hear and determine an appeal in a civil action from such inferior court, has consented to the issuing thereof.”

[19] On the other hand section 47(1) of the Act stipulates that:

“Notwithstanding any other law, no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.”

[20] It is self-evident that section 47(1) is wider in its application than its predecessor in the sense that it includes Justices of the Constitutional Court, who were previously not mentioned in section 25(1) of the Old Act[10] (reference was only made to the Chief Justice). That is the only difference of substance. Therefore, there is no substantive discrepancy between the two sections. Parliament simply transplanted the substance of the doctrine of leave to sue from the old section 25(1) to the new section 47(1)[11].

[21] Indeed the overarching foundation of Mbenenge JP’s conclusion in NP v LP is captured in his finding that section 47(1) “is apposite in the situation of a judge in active service, and not one who no longer discharges judicial functions,”[12] and that “no stretch of the imagination is required to conclude that within the scheme of the entire Act, retired judges do not feature in the running of the courts.”[13] I surmise that that Mbenenge JP was stating a general principle that is relevant when a head of Court is approached to grant consent to sue a retired Judge. As I demonstrate hereunder, whenever consent is requested it is expected of the head of Court to approach the matter on its own merits. Indeed, a case-by-case approach is warranted in deciding whether to grant consent or not.

[22] At the outset I point out that the absence in both the old and new sections, of a distinction between Judges still in active service and retired Judges, is not insignificant. Perhaps the most obvious reason is that a Judge’s appointment is a lifetime appointment. It subsists even during the time the Judge has retired. However, for a more fundamental reason the statement that retired judges no longer feature in the running of the courts must be qualified, as I show below.

[23] We know that there are Judges who retire but who continue to feature in judicial functions and activities. This is to finalize

part heard matters they are seized with but more importantly, retired Judges are appointed to undertake new work allocations either in their divisions or in others. Clearly therefore these Judges continue to feature in judicial activities despite being retired. Section 2(c) of the Act states that the object of the Act is “to make provision for the administration of the judicial functions of all the courts...”. Retired Judges who are called to act from time to time or to finalize part heard matters fall within the ambit of the above-mentioned administration, in that the head of that Court retains supervisory authority over retired Judges especially when assigning work to them and everything related to those functions. It is the responsibility of that head of Court to also ensure that the necessary administrative resources are availed to that retired Judge. This illustrates that despite being retired these Judges continue to play a role in the judiciary i.e., in rendering judicial functions.

[24] It is instructive further to note that Section 1 of the Act further states that:

“service” means - (a) service as a judge of the Supreme Court of Appeal or a High Court as

contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office; (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947); (c) service as a chairperson or a member of a body or institution established by or under any law; or (d) any other service which the Minister may request him or her to perform.’

[25] The import of this provision is to buttress the underlying rationale that retirement cannot be construed as contended by FUL, to lead to loss by retired judges of the protective mechanism of section 47(1). I hold the view that properly considered, the word “service” in this section must include Judges who are retired but who continue to either perform Judicial functions when called upon to do so by the Minister in line with (d) or have been appointed to perform other functions as provided in the section in other capacities. In other words, section 47 ought not to limit the scope of application of the leave to sue doctrine to only Judges who remain in active service. Clearly the immunity implicit in the section also extends to those retired Judges who remain in service. It is therefore conceivable that Mbenenge JPs conclusion in NP v LP could be correct in a matter where the retired Judge sought to sued has not featured and will not be called to render any service

whatsoever. However this is subject to what I say in the following paragraph.

[26] Additionally, one cannot exclude the real prospect of litigation being initiated against retired judges arising from matters they handled whilst still in active service. I mention this aspect simply to remind ourselves that the safety net of section 47(1) is largely aimed at protecting judicial independence as articulated in *Soller v President of the Republic of SA*[14] by Ngoepe JP and later in *Engelbrecht v Khumalo* to the effect that “Section 47(1) is the mechanism through which the institution of legal proceedings against judges is regulated and plays what I regard as a gate keeping role”. In essence the section seeks to insulate judges from unwarranted and ill-conceived legal proceedings aimed at them. The need to

protect judges from unwarranted litigation is not difficult to fathom. The core function of Judges is the adjudication of disputes involving competing interests daily. The judgements they hand down as well as the statements they make in their judgements invariably displease some litigants and sometimes their legal representatives. It is integral to the adjudication function of Judges that they should be free from any fear of repercussions for doing their work. It is necessary therefore that Judges be protected from the ever present threat of legal proceedings directed at them arising from the execution of their official responsibilities. This is necessary to ensure that they adjudicate disputes unhindered and that they do so ‘without fear, favour or prejudice.’[15]

[27] To me this points to the doctrine of leave to sue remaining as relevant to retired Judges as it does to Judges still in active

service. That this is so is found in the reach of the section i.e., covering conduct in office and in private. Clearly this can only mean that retired Judges remain relevant in the insulation of the judiciary from meritless lawsuits, to ensure noninterference with its proper functioning. Therefore, one cannot exclude retired Judges from the ambit of section 47(1). Whilst it remains important, for a head of Court approached in terms of section 47(1), to consider whether in the context of all relevant factors, there is merit to the intended suit against the Judge and whether such suit poses any threat to the proper functioning of the Judiciary, it remains important for all these factors to be taken into account in the decision whether consent should be granted. This is the consideration required from the head of Court and in my view applies with equal force even where a Judge is retired. This demonstrates the prudence of a case by case enquiry by a head of Court.

[28] It is also notable that Article 17 of the Code of Judicial Conduct provides that:

“A judge who is no longer on active service or liable to be called upon to perform judicial duties (herein referred to as a retired Judge) shall act honourably and in a manner befitting his or her

status” Courts or heads of court rather should, when applying section 47(1), consider each matter on its own facts. When assessing the merits of each case it is “. . . important to stress that the court's role is of a discretionary nature which should be exercised in light of all the relevant considerations including the benefits which the granting thereof may hold for the parties. . . What it requires the court to do is to attempt to strike a balance between the different considerations relevant to the exercise of its discretion.”[16] Based on all I have said thus far, the first declaratory order sought by FUL cannot be granted.

[29] The second declaratory order sought by FUL is that the phrase ‘civil proceedings’ in section 47(1) should not be interpreted to countenance review proceedings instituted against administrative decision makers such as the JSC and not against Judges even if such Judges have an interest in the matter or outcome thereof. The argument advanced by FUL in this regard is that in the first place the review proceedings are not “instituted against any judge” but against the administrative decision maker, the JSC in this instance. In the second place it is argued that the review proceedings can proceed with or without the interested Judge’s

participation. In the fourth place it is argued that that review proceedings are “sui generis” proceedings whose objective is to test the lawfulness of an administrative decision maker’s decision.

[30] Based on the foregoing the submission is advanced that section 47(1) cannot be used as a means to limit a litigant’s access to Court when such review proceedings are at issue. It is argued that interpreting “civil proceedings” as found in section 47(1) to encompass review proceedings of the nature we are dealing with “would limit not only the right of access to court found in section 34[17] of the Constitution but also the right to administrative justice”.

[31] FUL has come up with an interpretation of section 47(1) suggestive that a refusal of consent to cite a Judge who has an interest in review proceedings not instituted against the Judge, would amount to a denial of access to courts and administrative justice to the litigant instituting such proceedings. To avoid such obvious unconstitutionality, FUL argues that the way to interpret the

section is that the phrase “civil proceedings” found in the section should be interpreted to exclude such review proceedings

from the ambit of the section. This would, in FUL’s view obviate the need to seek the requisite consent.

[32] I cannot find any basis to regard the phrase “civil proceedings” to be capable of more than one interpretation

simply because the target thereof is not a Judge who has an interest in the said proceedings. Review proceedings are “civil

proceedings” and that is the only interpretation that applies. It cannot be that the interpretation of the phrase has a double

meaning simply because the relief sought is against one respondent but not against another who also has an interest in the same

proceedings. In my view FUL’s argument advocating for a restrictive interpretation of the phrase “civil proceedings”

excluding judicial review from the ambit of section 47(1) is ill conceived and must be rejected.

[33] The fact of the matter is that such review proceedings do not depend on the participation of the judge who has an interest in the proceedings, a point FUL also make. Those proceedings can take place and be finalized with or without the participation of the Judge, a fact recognized by FUL. FUL’s interpretative argument has the effect of limiting the ambit of section 47(1) which cannot, on the objective of the section and the act in general, be justified on any basis. The clear language of section 47(1) is that the consent of the head of the Court where the Judge has been appointed, must be sought to cite the Judge in the intended proceedings. Should such consent be granted it will be up to the Judge to decide whether to

participate in the proceedings or abide the decision of the court hearing the review application.

[34] My conclusion, having considered FUL's submissions is that consent as ordained by 47(1) is required to cite the respondent in the review proceedings. As to whether good cause has been shown to warrant the requisite consent, this is a case where consent must be granted. The respondent has retired and has not been called to act or participate in judicial functions since retiring. Prior to his retirement in February 2017, the respondent was on special leave for almost a decade. The respondent's involvement in the review proceedings will in no way impede the functioning of the High Court in which he formerly served. Nor will his inclusion in the review proceedings undermine the independence of the judiciary. All these facts illustrate the case by case approach implicit in such matters and that consent is warranted in the circumstances of this matter. Furthermore, the review proceedings aimed at upsetting the JSC's decision contain a justiciable issue. The objective thereof is to challenge the lawfulness, rationality and validity of the JSC's decision. The objective of the review proceedings is therefore aimed at asserting the proper standard by which Judges' misconduct should be dealt with by the JSC. Issues of judicial integrity and accountability will of necessity be ventilated in the review proceedings. It is common cause that the Judicial Conduct Tribunal, established to investigate allegations of gross misconduct against the respondent,

had recommended that the respondent be found guilty of gross misconduct which carried with it the prospect of impeachment but the

JSC rejected that recommendation opting instead to return a verdict of misconduct simpliciter. The review is aimed testing the appropriateness of that finding.

[35] This is, in my view, a clear case where consent is warranted, and it is for the respondent to decide if he would want to participate in the review proceedings. An administrative decision was taken by the JSC against the respondent and the review application threatens the respondent's interest as he has complied with that decision.

ORDER

[1] In the circumstances I make the following order:

1. The applicant is hereby granted leave in terms of s 47(1) of the Superior Courts Act 10 of 2013 to issue legal process against the respondent relating to the main application in this matter under case no. 17374/2020.
2. In the circumstances of this case, the institution of the review proceedings before the grant of consent in terms of section 47(1) does not vitiate those proceedings.
3. There is no order as to costs.

D MLAMBO

JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT

OF SOUTH AFRICA

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 January 2021.

Appearances:

Counsel for the Applicant: Adv. C Steinberg

Adv. N Luthuli

Instructed by:

Webber Wentzel Attorneys

Reference: V Movshovich / P Dela / D Cron /

M Kruger / D Rafferty / A Carr / L Mthembu 3037225

Counsel for the Respondent: None (Notice to abide filed)

Instructed by:

S Ngomane Inc. Attorneys

Reference: HN530/2020

Date of hearing: 01 October 2020

Date of judgement: 28 January 2021

[1] 2007 (3) SA 569 (T) at para 4.

[2]

[2005] ZAGPHC 13; 2005 (3) SA 567 (T) at para[14]

[3] 2016 (4) SA 564 (GP) at para 3.

[4] Ibid, paras 7-8.

[5] Ibid. See also *Soller v President of the Republic of South Africa and Others* [2005] ZAGPHC at para 17. The court held that for the purposes of section 25(1) there was no substantive difference between a claim based on a decision made by a Judge in court and one based upon the extra-curial transactions of a Judge. The Judge needs protection from both if they are without merit.

- [6] Soller v President of the Republic of South Africa and Others [2005] ZAGPHC at para 1.
- [7] McCreath H and Koen R. "Defending the absurd: the iconoclast's guide to section 47(1) of the Superior Courts Act 10 of 2013" 2014 PER 1789-1827.
- [8]
- [2020] ZAECELLC 10
- [9]
- [2020] ZAECELLC 10 at para 47.
- [10] Supra at note 7, pg 1790. This is evident from s 1 of the Superior Courts Act 10 of 2013, which defines a Superior Court to mean "the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court". The question of suing Constitutional Court judges used to be governed by the Constitutional Court Complementary Act 13 of 1995. The Superior Courts Act has consolidated the doctrine of leave to sue and repealed both the Supreme Court Act 59 of 1959 and the Constitutional Court Complementary Act 13 of 1995.
- [11] Supra at note 7, pg. 1790.
- [12] At para 47
- [13] At para 45
- [14] supra at para 12 above
- [15] 2016 (4) SA 564 GP, at paras [3] and [4]
- [16] PL v YL 2013
- (6) SA 28 (ECG) at para 41.
- [17] Section 34 provides

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2021/14.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/freedom-under-law-v-motata-unknown-topic-agpphc-2021>

Prepared on 12 October 2026 · Esheria