



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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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Minister of Justice and Correctional Services and Others v

Wilhelm Pretorius and Others (440/2022) [2023] ZASCA 155 (17 November 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the full court of the Gauteng Division of the High Court, Johannesburg (the full court). The respondents were long term prisoners serving sentences of between 20 and 30 years' imprisonment. The first respondent, Mr Wilhelm Pretorius, was registered for a doctoral degree in Theology at the University of Pretoria. The second respondent is his brother, Dr Johan Pretorius, a medical doctor who was registered for a degree in Biblical and Ancient Studies at the University of South Africa. The third respondent is their father, Dr Johan (Lets) Pretorius, a medical doctor, who was registered for an honours degree in Political Sciences at the University of South Africa.

Although they had access to computers in the correctional centre's computer room between the hours of 7:00am and 2:00pm, they were not permitted to use their personal computers in their cells to progress their studies during the lengthy hours that they were locked up in their cells. They sought to use a personal computer in their cells for study purposes, but their requests were rejected, as the departmental 'Policy Procedure Directorate Formal Education Programmes' (the policy) prohibits the use of a personal computer in a cell for study purposes. They accordingly brought proceedings in the Gauteng Division of the High Court, Johannesburg (the high court).

On 14 May 2018, the high court, *per* Swanepoel AJ, granted an order in their favour. The policy, insofar as it relates to the use of personal laptops without a modem in any communal or single cell, was declared to constitute unfair discrimination in accordance with the Provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act), as against the respondents.

Aggrieved by that order the Minister of Justice and Correctional Services, the National Commissioner: Department of Correctional Services and the Head of the Correctional Centre in question appealed to the full court. On 21 January 2022, the full court dismissed the appeal with costs. This appeal, with leave of this Court, lies against the order of the full court. Another appeal, *Minister of Justice and Constitutional Development and Others v Ntuli (Judicial Inspectorate for Correctional Services intervening as amicus curiae)* was enrolled for hearing together with this appeal, since the two appeals involve similar facts and the same issues of law. However, it turned out that the three Pretorius family members were all released on parole about 18 months prior to the hearing of the two appeals.

The SCA held that it is clear from the factual circumstances that the Pretorius appeal is moot. A decision on appeal would have no practical effect or result. This, the SCA held, however, is not the end of the inquiry. The central question for consideration is whether, irrespective of its mootness, it is in the interests of justice for the SCA to decide the appeal. The interests of justice might well have compelled the SCA to decide this appeal on its merits, had it not been for the SCA's judgment in the

Ntuli appeal (*Minister of Justice and Constitutional Development and Others v Ntuli* ((*Judicial Inspectorate for Correctional Services intervening as amicus curiae*) (539/2022) [2023] ZASCA 146 (8 November 2023)). There, the SCA found that the constitutional right to further education is, at a minimum, a right to pursue further education, free of state interference. The policy prevents a prisoner from effectively pursuing his or her chosen course of study and, therefore, the SCA found the policy to infringe the constitutional right to further education. In the result, the SCA declared that the blanket policy prohibiting the use of personal computers in cells was constitutionally invalid and it set it aside. The order was not confined to Mr Ntuli but extends to any registered student in a correctional centre who needs a computer to support their studies, and/or any student who has registered for a course of study that requires a computer as a compulsory part of the course.

The SCA, therefore, concluded that the appeal became moot when the three Pretorius family members were released on parole. The order in *Ntuli* affords adequate protection against infringements of their constitutionally entrenched right to further their education should the Pretorius family members' bail be revoked, and they are reincarcerated.

~~~~the end~~~~