



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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

**UNIVERSITY OF THE FREE STATE
v
AFRIFORUM & ANOTHER**

[1] The University of the Free State (UFS) acted lawfully when it adopted a new language policy in March 2016, which replaces Afrikaans and English as parallel mediums of instruction with English as the primary medium. So said the Supreme Court of Appeal (SCA) today, when it upheld an appeal by UFS against a ruling of by three judges of the Free State Division of the High Court in July 2016, which reviewed and set aside the decision to adopt the new policy as unlawful. The application to review and set aside the adoption of the policy was brought by Afriforum and Solidarity.

[2] In a unanimous judgment written by Justice Azhar Cachalia, in which Justices Kevin Swain, Rami Mathopo, Burton Fourie and Ashton Schippers concurred, the SCA said that UFS's conduct had been exemplary in the manner in which it adopted and gave careful consideration to the new policy. The main reason given for the departing from the parallel-medium policy was that it had the 'unintended consequence' of segregating white Afrikaans-speaking students from

Black students who have chosen to study in English. This led to racial tensions as well as staff and student complaints. The SCA held this was a good reason to depart from the existing policy.

[3] The High Court had held that in adopting the new policy UFS had failed to consider s 29(2) of the Constitution, which guarantees language of choice in public education institutions when 'reasonably practicable' and the 2002 Higher Education Language Policy (LPHE), which advocated the retention and strengthening of Afrikaans at historically Afrikaans universities such as UFS. However, the SCA held that the evidence showed that UFS had indeed considered both s 29(2) and the LPHE.

[4] In regard to s 29(2), the SCA upheld UFS's contention that it was no longer 'reasonably practicable,' to continue with the existing policy. And as far as the LPHE was concerned, it held that it was merely a guideline which UFS was free to depart from in formulating its own language policy in terms of s 27(2) of the Higher Education Act 101 of 1995. There was therefore no basis for the argument by Afriforum and Solidarity that UFS had misconstrued its powers when it adopted the new policy.

[5] In regard to the costs of the appeal, the SCA held that Afriforum was not liable to pay for the UFS's costs because its real purpose was to vindicate the constitutional rights of Afrikaans language speakers. However, Solidarity, as a trade union had not shown that it had a legal interest in these proceedings and was therefore liable for UFS's costs.