



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM : The Registrar, Supreme Court of Appeal

DATE 29 March 2017

STATUS Immediate

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

Cathay Pacific Airways Ltd & another v Lin & another (260/2016) [2017] ZASCA 35 (29 March 2017)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today upheld an appeal against an order granted in the Gauteng Local Division of the High Court, Johannesburg, in terms of which the appellants were convicted of civil contempt of court. The first appellant, Cathay Pacific Airways(the airline), acting under an instruction from the Department of Home Affairs(the Department) under s34(8) of the Immigration Act, returned the respondents' 3 children on a flight back to Hong Kong from OR Tambo International airport. Upon their arrival in this country, the 2 younger children (who were minors at the time) were declared by the Department to be illegal foreigners on the basis that they were in possession of fraudulent residency permits. The older child was declared to be an illegal foreigner since he had accompanied the 2 younger children. It became common cause afterwards in the course of the litigation that this was a mistake on the part of the Department. An order was issued by the High Court, Johannesburg, by telephone to restrain the airline from boarding the children. The order was, however, not properly conveyed to the relevant airline employee and the children left for Hong Kong. Within a period of a week three subsequent orders were made: 2 for the return of the children from Hong Kong and the fourth order directed the airline to pay the costs on a punitive scale. Thereafter the respondents launched civil contempt proceedings in the High Court which was opposed by the airline and Ms Shirley Jones, a senior employee of the airline. Spilg J found the airline to be in contempt of the first, second and third orders and Ms Jones was found to be in contempt of the second and third orders.

The first issue at the heart of the appeal concerned the circumstances in terms of which a court is empowered to grant an order telephonically and the processes to be employed in ensuring that such order is recorded and served effectively in order that it may come to the notice of affected parties. Another issue dealt with in the appeal is the liability for civil contempt of court of an employee of a company in respect of an order granted against that company, where the employee had neither been cited as a party, nor an order granted against him or her.

The SCA, in dealing with the first order, considered the facts and the urgency of the situation giving rise to the appeal, where the welfare of minor children was at stake. The SCA held that it was highly improper not to reduce the terms of the first (telephonic) order to writing, although it readily accepted that the Judge had indeed been seized with a matter of extreme urgency and that such urgency justified hearing the matter over the phone as well as the subsequent issuing of an order telephonically.

The SCA also held that the fact that the appellants were held in contempt of court when the order in question had never been served on them was unsustainable and plainly wrong, given the facts. Moreover, that in order to succeed with a conviction of contempt of court, proof beyond reasonable doubt and satisfaction of all the elements was required, and that had not been done. In dealing with the rest of the orders, the SCA further held that the court a quo had erred in issuing orders that were beyond its jurisdiction and had also failed to apply the proper approach to disputes of fact where final relief was being sought. Finally, it highlighted the importance and necessity for abundant caution in the fair and even-handed dispensing of justice however urgent a matter may be. Consequently, the appeal was upheld and the order of the High Court set aside. The appeal against the dismissal of the airline's counter-application relating to the punitive costs order (the fourth order) was only partially successful, in that the order was amended to a normal party and party costs order.

--- ends ---