



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

DATE 29 August 2022

STATUS Immediate

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

Minister of Social Development v SA Childcare (Pty) Ltd & Others; MEC for Social Development, Eastern Cape & Others v SA Childcare (Pty) Ltd & Others (Case no. 71/2021) [2022] ZASCA 119 (29 August 2022)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today upheld the appeal of the Minister of Social Development and of the MECs for Social Development in eight provincial governments, against SA Childcare (Pty) Ltd and seven other parties involved in the early childhood development sector (the respondents).

The respondents had brought an urgent application in the high court in which they had sought wide-ranging relief against the Minister and the MECs. Much of the relief had either been abandoned or had been found by the high court to have been moot. The only issue dealt with was whether the Minister and the MECs had violated constitutional rights by failing to pay subsidies to Early Childhood Development centres (ECDs) during and after the lockdown imposed in terms of the Disaster Management Act 57 of 2002 as a result of the COVID-19 pandemic.

The high court had found that the Minister and the MECs had indeed violated constitutional rights. It made declaratory orders to this effect, directed the Minister and the MECs to remedy their infringements and ordered them to pay costs on a punitive scale. The Minister and the MECs appealed against these orders.

Prior to the hearing of the appeal the parties were requested to file heads of argument on whether the appeal was moot in light of the fact that the state of disaster had been lifted and the non-payments complained of related to the 2020/2021 financial year, which had passed. The Minister and the MECs conceded that the appeal was moot, but wanted the punitive costs order to be changed. The respondents took the

view that the appeal was not moot and insisted that it be argued. In the light of this, the Minister and the MECs withdrew their concession.

The appeal was then heard on the merits. The SCA found that the high court had misdirected itself on the facts. It had decided disputes of fact on the basis of the respondents' version – the applicants in the high court – rather than on the version of the Minister and the MECs, as required by the well-known *Plascon-Evans* rule. On the correct approach, the evidence was that the Minister had undertaken to pay the subsidies of ECDs during the lockdown and had instructed the MECs to do so. The MECs, in turn, had undertaken to do so. They had, however, decided to only pay 60 per cent of each subsidy. This was to cover administration costs and salaries. They withheld the 40 per cent that was intended to cover the cost of nutrition for children attending ECDs. They did so because, during the lockdown, ECDs could not operate and the children who had attended them were not permitted to leave their homes. This part of the subsidy was repurposed to increase child support grants and to fund food parcels for distribution to those in need. In this way, the MECs sought to meet the nutritional needs of children who had, prior to the lockdown, attended ECDs. As soon as the children could return, the full subsidy was paid again. The Minister and the MECs conceded that there had been some failures to pay subsidies, but asserted that these were not systemic in nature and were the result of administrative problems on the part of the provincial departments in some cases and of ECDs in other cases. They undertook to remedy the problem.

On these facts, the SCA found that there had been no violations of constitutional rights on the part of the Minister and the MECs. It accordingly upheld the appeal and set aside the order of the high court.