



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: 31 March 2023

Status: Immediate

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

Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs (104/2022) [2023] ZASCA 35 (31 March 2023)

The Supreme Court of Appeal (SCA) handed down the reasons in an appeal that it dismissed on 14 March 2023. The appeal was against the decision of the Gauteng Division of the High Court, Johannesburg (the high court), which dismissed an application against the Minister of Cooperative Governance and Traditional Affairs (the Minister), challenging the regulations concerning religious gatherings promulgated under the national state of disaster in relation to the COVID-19 pandemic. No order was made as to costs.

During March 2020, the Minister promulgated a series of regulations which imposed drastic measures that sought to combat the COVID-19 pandemic in South Africa. These included, inter alia, imposing restrictions on public gatherings, which included religious or faith-based gatherings. In January 2021, Solidariteit Helpende Hand NPC, the South African National Christian Forum (SANCF), the Muslim Lawyers Association, and Freedom of Religion South Africa NPC, launched separate applications against the Minister, challenging the regulations concerning religious gatherings. Under the impugned regulations, all faith-based gatherings were prohibited.

Before the consolidated application was heard in the high court, the Minister amended the impugned regulations and promulgated new regulations. These lifted the ban on religious gatherings, albeit with restrictions on the number of attendees, provided that there was adherence to social distancing and health protocols. The high court dismissed the application on the basis that the matter was moot, because the ban on religious gatherings had been lifted before the matter was heard by the high court.

By the time the appeal came before the SCA, all of the regulations promulgated in terms of the Disaster Management Act 57 of 2002 (DMA) to combat the effects of the COVID-19 pandemic had been repealed.

The SCA found that the issue of mootness was dispositive of the appeal. In this regard, the SCA found that having regard to the fact that the impugned regulations were long since repealed and no longer in force before the matter came before the high court, there was nothing to set aside. There was no live issue for that court to adjudicate upon. The SCA found further that there was no discrete issue before the SCA. It was thus not necessary to go into the merits of the matter. As a result, the SCA's decision in respect of the impugned regulations based on the current facts would have no effect, as there were no regulations in place at the present moment.

Accordingly, the SCA held that the high court was correct in finding that the matter was moot. Its findings were unassailable. The SCA held further that there was no real purpose to be served by entertaining the appeal.

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