

Mahlangu and Another v Minister of Labour and Others

Commission for Gender Equality and Another as amici curiae [2020] JOL 48996 (CC)

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INTRODUCTION

On 19 November 2020, the Constitutional Court of South Africa ("**the Constitutional Court**") handed down judgment in the case of *Mahlangu and another v Minister of Labour and others* (CCT 306/19) [2020] ZACC 24, 2021(1) BCLR 1 (CC); [2021]; [2021] 2 BLLR 123 (CC) (2021) 42 ILJ 269 (CC) ; 2021 (2) SA 54(CC) (19 November 2020), where the honourable court had to confirm the High Court's order declaring section 1 (xix)(v) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("**COIDA**") as constitutionally invalid to the extent that it excludes domestic workers from claiming compensation from COIDA's Compensation Fund as a result of injuries, illnesses or diseases sustained during the course of their employment.

BACKGROUND

On 31 March 2021, Ms Maria Mahlangu, a South African domestic worker who was employed in a private household for 22 years had drowned in her employer's pool while performing her duties. Her daughter, Ms Sylvia Bongi Mahlangu ("**the First Applicant**"), who was financially dependent on her late mother, had approached the Department of Labour as she sought to claim compensation as a result of her mother's passing. Unfortunately, the First Applicant was informed that section 1 (xix)(v) of COIDA was not applicable to domestic workers. This section did not make provision for domestic workers who were employed in private households as they were unable to claim compensation should they suffer from an injury, disablement or death whilst executing their duties in the course of their employment, nor could the First Applicant claim unemployment insurances which are covered under the scope of COIDA. Aggrieved by the Department of Labour's findings, the First Applicant and the South African Domestic Service and Allied Workers Union ("**Second Applicant**") approached the North Gauteng High Court to declare section 1 (xix)(v) of COIDA as inconsistent with the Constitution. The First and Second Applicant are collectively referred to as "the Applicants".

THE NORTH GAUTENG HIGH COURT

In the North Gauteng High Court, the Applicants argued that the exclusion of domestic workers under the definition of "employees" in COIDA, infringed upon section 9(3) of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**") which provides that no one may be unfairly discriminated against on the basis of race, gender, sex and social origin. In view of section 9 (3), domestic workers were unfairly discriminated against as a result of differentiation from other employees who work in private spaces and are covered under the scope of COIDA. Section 10 of the Constitution provides for the right to dignity, as such, the Applicants argued that the exclusion of domestic workers in COIDA infringed upon their right to dignity and had adversely contributed to their economic and social standing. The Applicants further submitted that this exclusion in COIDA deprives domestic workers of social insurance and in turn violates their right to social security under section 27(1)(c) of the Constitution. The Applicants highlighted that the purpose of COIDA is to provide social insurance to employees who are injured in the workplace, who contract diseases or die while executing their duties in the course of employment.

On 23 May 2019, the North Gauteng High Court ordered that section 1(xix)(v) be severed from COIDA as the exclusion of domestic workers is unconstitutional as it excluded domestic workers from the definition of "employee". On 17 October 2019, the North Gauteng the High Court handed down a second order which held that the declaration of invalidity must take retrospective effect to assist other domestic workers and their families who were previously injured or died at work prior to the order being granted. The Applicants sought confirmation from the Constitutional Court of the High Court order which declared section 1(xix)(v) in COIDA as invalid as it infringed upon the domestic workers' rights to human dignity, equality and access to social security.

THE CONSTITUTIONAL COURT

The Constitutional Court upheld the High Court's order and declared section 1(xix)(v) of COIDA as unconstitutional to the extent that it excludes domestic workers from the definition of "employee". The judgment resulted in the inclusion of domestic workers in section 1(xix)(v) of COIDA, with retrospective effect dating back to 27 April 1994. The Constitutional Court further held that the exclusion of domestic workers under COIDA has a stigmatizing effect on the dignity of domestic workers and demonstrates that their duties in the course of their employment are undervalued. In its findings, the Constitutional Court relied on international law provisions such as the Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights and the Convention Convening Decent Work for Domestic Workers to emphasise the need for South African law to advance the need to recognise equal access to social security and eradicate unfair discrimination against women who are employed as domestic workers. The Constitutional Court removed the unconstitutional section in COIDA and broadened the right to apply for compensation to include domestic workers.

CONCLUSION

The Constitutional Court has cited domestic workers as being the "unsung heroes in this country and globally".¹ The Constitutional Court's decision will be beneficial in protecting the rights of domestic workers in South Africa. All domestic workers who suffer from injuries in the course of their employment will now be able to claim compensation under COIDA and will be able to enjoy access to compensatory benefits should the need arise.

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¹*Mahlangu and another v Minister of Labour and others* (CCT 306/19) [2020] ZACC 24, 2021(1) BCLR 1 (CC); [2021]; [2021] 2 BLLR 123 (CC) (2021) 42 ILJ 269 (CC); 2021 (2) SA 54(CC) (19 November 2020) at paragraph 1.



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