

Supreme Court tears into KZN judge

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Four-year delay in delivering judgment was "an unconscionable dereliction of duty..."



The Supreme Court of Appeal has rebuked a KwaZulu-Natal judge for taking four years to deliver a judgment. Photo: Ben Bezuidenhout via Wikimedia (CC BY-SA 4.0)

- The Supreme Court of Appeal has sharply rebuked KwaZulu-Natal judge Anton Van Zyl over a delayed judgment.
- He took four years to rule in favour of a company for damages after a strike.
- The SCA overturned his judgment and lambasted him for taking so long.

The Supreme Court of Appeal has lambasted a KwaZulu-Natal judge for taking four years to deliver a judgment involving a civil claim for damages emanating from a strike.

In the ruling, penned by Acting Judge Glenn Goosen (with four judges concurring), the court says this was "an unconscionable dereliction of duty".

The matter before the SCA was an appeal by the National Union of Metal Workers of South Africa against a ruling by Judge Anton Van Zyl in the Pietermaritzburg High Court in favour of Dunlop Mixing and Technical Services. The company

had claimed for “riot” damages, through the Gatherings Act, arising from a protected strike which had turned violent.

The SCA overturned his ruling, saying the Act did not apply because the industrial action was a picket “in furtherance of a protected strike” authorised under the Labour Relations Act, which gives immunity from civil claims.

Towards the end of the judgment, the court notes the four-year delay and says: “The judgment (of Van Zyl) gives no explanation for this extraordinary delay.

“We were informed by counsel that whereas the underlying labour dispute had long since been resolved, the consequences, in the form of civil litigation (for damages), are self-evidently not.

“The prejudice caused by a delay of four years is manifest. How it can take the judge four years to decide this issue and to deliver his judgment defies understanding.”

The judges said if there was a reasonable explanation or excuse Van Zyl should have set it out in his judgment.

“It is after all, on the basis of judgments delivered by judges that they are held accountable for the administration of justice under their auspices.”

“The absence of an explanation suggests there is none. A four-year delay constitutes an unconscionable dereliction of duty....It is a matter which ought to enjoy the consideration of the Judge President of the division concerned.”

The office of the Chief Justice, in its term three report on reserved judgments, reiterates that judicial norms and standards state that judges should make every effort to hand down reserved judgments within three months.

At the beginning of the term there were 607 judgments reserved, with 525 for less than six months and the balance, 82, for longer.

Van Zyl tops the list of offenders in Pietermaritzburg, with two judgments outstanding for 90 and 84 months, the first having been reserved on 12 December 2012, and the other on 4 June 2013. He also has three other outstanding judgments on the Pietermaritzburg list of 18, with judgments outstanding from November 2017, and two from October 2019.

KZN Judge President Achmat Jappie said he had not seen the SCA judgment, but he was aware that Judge Van Zyl had a number of long-outstanding judgments. He said the issue had been referred to the Judicial Services Commission.

“He is not the only judge in this division who has outstanding judgments, but he is the worst. And it seems he is unenthusiastic about catching up.”

Judge Jappie said he believed the Covid pandemic might have played a part in delays in all judicial enquiries of this nature.

The spokesperson for the office of the Chief Justice Nathi Mncube did not respond to a request for comment.

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