



JUDGMENT IN MR V MINISTER OF SAFETY AND SECURITY

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The Constitutional Court today confirmed the principle that the best interests of the child as the paramount consideration must be applied by an arresting police officer dealing with a child. The Centre for Child Law welcomes the judgment of the Constitutional Court handed down today in the case of MR v Minister of Safety and Security, CCT 151/15.

The case concerned the arrest and detention of a fifteen year old girl. The central question the court had to answer was how the best interest principle must be applied by police officers who have to confront children in conflict with the law in real life situations.

MR was 15 years old at the time of her arrest and was arrested when she attempted to intervene in the arrest of her mother for an alleged contravention of a domestic violence order. MR was arrested for interfering with police officers in the execution of their duties. She was then detained for approximately 19 hours. MR then instituted a civil claim for unlawful arrest and detention. The claim failed in the High Court and after several unsuccessful appeals, MR appealed to the Constitutional Court.

The Constitutional Court heard argument on 25 February 2016. The Centre for Child Law, as *amicus curiae*, argued that the Constitutional Court should interpret section 28(1)(g) of the Constitution as including the principle that *arrest* of a child should also be a last resort. While the law is clear that the detention of children as a sentence should be considered a last resort, the same was not clear with regards to arrest. The Centre argued that the interpretation that detention at arrest should be a measure of last resort is in line with the international law regarding child offenders and is required by the constitutional principle that the best interest of the child is the paramount consideration in all matters concerning children, as set out in section 28(2) of the Constitution.

The court found that arrest does not include detention for purposes of section 28(1)(g) as the Constitution clearly differentiates between arrest and detention. However, the court found that the police officers failed to consider that MR was a child at the time of her arrest and violated

her right to have her best interest considered paramount. The court lays down the law in respect of arrest of a child as follows:

“It is trite that an arrest is an invasive curtailment of a person’s freedom. Under any circumstances an arrest is a traumatising event. Its impact and consequences on children might be long-lasting if not permanent. The need for our society to be sensitive to a child’s inherent vulnerability is behind section 28(2) of the Constitution. Section 28(2) is broadly worded. The interests of children are multifarious. However, in the context of arrests of children, section 28(2) seeks to insulate them from the trauma of an arrest by demanding in peremptory terms that, even when a child has to be arrested, his or her best interests must be accorded paramount importance. Given the importance which our Constitution places on the rights of children, this means that an arrest of a child should be resorted to when the facts are such that there is no other less invasive way of securing the attendance of such a child before a court.”

There is therefore a duty on each police officer to consider the best interest of the child whenever the police officer is confronted with having to make the decision whether to arrest the child or not. This means that a police officer must consider if there are less severe methods than arrest to ensure the child is brought before court, including other methods prescribed by the Child Justice Act.

The court also found that MR’s detention after arrest was in violation of section 28(1)(g) of the Constitution that detention must be a measure of last resort. MR could easily have been left in the care of her father with an instruction to appear in court.

The decision by Bosielo J reinforces the law that police officers must consider the best interests of the child and the principles of the Child Justice Act – which provides alternatives to arrest and detention for child offenders – whenever they are exercising their duties in respect of child offenders.

Ends.

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