



22 May 2014

SECTION27, Treatment Action Campaign, Wits Justice Project and the Centre for Applied Legal Studies joint statement on the passing of Dudley Lee

JOHANNESBURG: SECTION27, the Treatment Action Campaign, Wits Justice Project and the Centre for Applied Legal Studies mourn the death of Dudley Lee and send condolences to his friends, family and loved ones. Mr Lee, who passed away in Victoria Hospital in Cape Town in the afternoon of 21 May 2014, was the Applicant in the matter *Lee v Minister of Correctional Services*, in which SECTION27 represented the Treatment Action Campaign, Wits Justice Project and Centre for Applied Legal studies as amici curiae (friends of the court).

Mr Lee's case resulted in a landmark judgment from the Constitutional Court related to the rights of detained people and the obligations on the state to "respect, protect, promote and fulfil the rights in the bill of rights".

Mr Lee was detained in Pollsmoor prison pending trial from April 2000 to September 2004, when he was acquitted and released. The Constitutional Court described conditions at Pollsmoor as "providing ideal conditions for transmission" of tuberculosis due to extreme overcrowding, poor healthcare services and other conditions. Mr Lee contracted tuberculosis in Pollsmoor because, in the words of the Court, the Department of Correctional Services "failed to take adequate, or any, steps to protect him against the risk of TB infection".

Upon his release, Mr Lee embarked on a mission to hold the Department accountable for its failures. It took him almost a decade of fighting, but his cause was vindicated by the Constitutional Court in December 2012, when the Court ruled in his favor and held the Department liable for violating Lee's rights and causing him to become infected with tuberculosis.

The Court emphasised that Mr Lee's battle with the Department had important implications for state "accountability and responsiveness ... and respect for rule of law".

Activists, detained people, lawyers, healthcare workers and all people committed to the Constitution now have a powerful tool with which to fight for rights and

accountability thanks to Mr Lee's efforts. Mr Lee's case has led to clarity on the rights of detained people and the obligation on the state to prevent the spread of tuberculosis, been instrumental in leading to the passage of new guidelines on the management of tuberculosis and HIV in prisons and a new emphasis on these services from the state.

While the state is still far from achieving a tuberculosis and HIV services programme that complies with its duties as described in the Dudley Lee judgment, Mr Lee's fight has borne fruit and achieved justice. His courage in standing up for what he believed in has left the world a better place.

SECTION27, the Treatment Action Campaign, Wits Justice Project and the Centre for Applied Legal Studies and other partners are committed to continuing the legacy of Dudley Lee by fighting for justice and rights for vulnerable people, including detained people.

Hamba kahle Dudley Lee!

The Constitutional Court on the importance of the Dudley Lee Matter:

"It is indeed so that prisoners are amongst the most vulnerable in our society to the failure of the state to meet its constitutional and statutory obligations, and that a civilised and humane society demands that when the state takes away the autonomy of an individual by imprisonment it must assume the obligation . . . inherent in the right . . . to conditions of detention that are consistent with human dignity." [para 65, internal quotations omitted]

The Supreme Court of Appeal on Mr Lee's struggle:

"Mr Lee has certainly had a hard time of it. For four years he was imprisoned while the state mustered its case against him and then the state failed. Meanwhile Mr Lee knew that he was at risk of contracting [TB] in a prison where the health-care regime was breaking down. When it occurred he had to manipulate and cajole at times to ensure that he consistently received medication, conscious that he would suffer adverse consequences if he failed to do so. He had good reason to feel aggrieved when he left prison but his troubles were not yet at an end.

When he vented his grievance by suing the state he was met with a defence on every leg of his claim. The state contested that Mr Lee had been infected in prison with no substantial grounds for doing so. It contested the allegations of an inadequate health-care regime when it must have known that it was defending the indefensible. The failing [health-care] regime had been repeatedly reported by its medical doctors at high level, various reports on the situation had been

circulated, newspapers had reported the position, a report of an inspector from the office of the Inspecting Judge that had been prepared some four years before the matter came to trial disclosed that [TB] management was virtually non-existent, and so on. Yet the state persisted . . . [not acknowledging any] responsibility towards Mr Lee at any time.

Mr Lee set out to vindicate an important statutory and constitutional right and has done so substantially.”

For further comments please contact:

- Wits Justice Project:
Nooshin Erfani-Ghadimi on nooshin.erfani-ghadimi@wits.ac.za or 084-283-1445
- Centre for Applied Legal Studies:
Kathleen Hardy on kathleen.hardy@wits.ac.za or 082-556-5196
- SECTION27:
John Stephens on stephens@section27.org.za or 073-077-5779

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