

Court rules that child offenders, victims and witnesses may not be named - even in adulthood

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Child offenders, child victims and child witnesses may not be named - even in adulthood, the Constitutional Court [ruled](#) on Wednesday.



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To sum up their majority ruling, the judges quoted Nigerian writer Chimamanda Ngozi Adichie who during a TED talk in 2009 said: “Stories matter. Many stories matter. Stories have been used to dispossess and to malign. But stories can also be used to empower, and to humanise. Stories can break the dignity of people. But stories can also repair that broken dignity.”

The case was between the Centre for Child Law and some of South Africa’s biggest media houses — Media24 and Independent — on if and when child offenders, child victims and child witnesses, can be publicly identified.

When the matter was heard in the Supreme Court of Appeal last year, the judges were divided when asked to change existing legislation which only protected child offenders and child witnesses up to the age of 18 and which offered no protection at all to child victims.

During its arguments, the Centre cited the well known case of “kidnapped baby” Zephany Nurse, whose identity could have been exposed by the media when she turned 18. It also highlighted another case where a young girl was convicted of murdering her grandparents. In that matter she was never named and had “managed to get on with her life”.

The media houses argued that any adult protection extension would infringe on their rights to freedom of expression, freedom of the media and the principle of open justice.

In a majority ruling, the SCA said that victims could not be identified, but this would only apply to the age of 18. The minority believed that child victims should be protected into adulthood.

On Wednesday, Judge Nonkosi Mhlantla — six judges concurring — said the issues “raised a tension that will require a delicate balancing act between various constitutional rights and interests. On the one hand, the best interests of children and their right to dignity and, on the other, the right to freedom of expression and the principle of open justice”.

On the issue of protection for child victims, the court ruled in line with the SCA, finding that there is a gap in law which was unconstitutional because it provided for an “arbitrary differentiation between classes of children, giving rise to a breach of the right to equality”.

But the Concourt judges went further, and examined the issue in the context of the best interests of children and their rights to privacy and dignity. They wrote: “Child victims are vulnerable to harm if they are publicly identified. Those who have fallen victim to crime are no less deserving than those who have witnessed a crime or those who are in conflict with the law.”

There was no justification for child victims not to be given “default protection”. On whether protection beyond 18 should be applicable, the judges said that the anticipation of identification harms children in all three classes. It could undermine the healing process of victims, witnesses and accused and lead to re-traumatisation and hinder rehabilitation. The “ticking-clock effect” could also affect child victims, they said. For example “Zephany Nurse” had to rush to court on an urgent basis for fear of disclosure after turning 18,” they said.

“A child’s vulnerability and their need for protection do not abruptly disappear when they turn 18. If ongoing protection is not the default, an unfair burden is placed on the child to rush to court, once 18.”

While this was a curtailment of freedom of expression and open justice, it was of “minimal harm” compared to the serious harm and impact on all three classes of children.

As with the SCA, the issue divided the judges of the apex court.

Justices Edwin Cameron and Johan Froneman agreed with the child victim protection aspect but not with the ongoing protection for all. “There should be no shame in being a victim of crime. No shame in being witness to a crime. There is shame in having perpetrated a crime, and the stigma society attaches to that is justly borne. That may depend on how close the perpetrator was to adulthood,” they said.

They added that, “Where the scales are so evenly balanced, where a judicial decree can, either way, remedy the wrong that the default position may wreak, we should rather take the risk of erring in the cause of openness and knowledge, and against stigma and shame.”

The court ruled that once any child involved in criminal proceedings turns 18, they may consent to the publication of their identity - as did “Zephany” when she herself asked for the identity interdict to be lifted ahead of her book.

Parliament has been given 24 months to amend the Criminal Procedure Act.

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