



CONSTITUTIONAL COURT OF SOUTH AFRICA

Lindiwe Mazibuko v Maxwell Sisulu and Another

Case CCT 115/12

Date of Judgment: 27 August 2013

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 27 August 2013 the Constitutional Court handed down a judgment in this matter, granting leave to appeal and direct access. The appeal was refused with costs. However, the direct access application was successful on the merits.

On 8 November 2012, Ms Lindiwe Mazibuko (the applicant) gave notice in the National Assembly (Assembly) of a motion of no confidence in the President in terms of section 102(2) of the Constitution. The Speaker (first respondent) referred the notice to the Chief Whips' Forum and the Programme Committee for the purpose of determining whether and when the motion should be debated and voted on in the Assembly. Neither of these committees reached consensus and the motion was not tabled before the Assembly.

The applicant instituted urgent proceedings in the Western Cape High Court (High Court). She sought an order directing the Speaker to take necessary steps to ensure that the motion of no confidence was debated and voted on in the Assembly by 22 November 2012. The High Court dismissed the application.

In this Court the applicant contended that the High Court was incorrect to find that the Speaker did not have the power in terms of the Rules of the Assembly to schedule the motion in the event of a deadlock within the Programme Committee. In the direct access application, the applicant argued that the Rules are inconsistent with the Constitution to the extent that they do not vindicate the right of a member of the Assembly to have a motion of no confidence debated and voted on as a matter of urgency.

In a majority judgement written by Moseneke DCJ (Froneman J, Khampepe J, Nkabinde J, Skweyiya J and Van der Westhuizen J concurring), the Court held that section 102(2) of the Constitution confers on a member of the Assembly the entitlement, to give notice of and have a motion of no confidence in the President tabled and voted on, in the Assembly within a reasonable time. The primary purpose of a motion of no confidence is to ensure that the President and the national executive are accountable to the Assembly, which is made up of democratically elected representatives of the people. The Rules of the Assembly must permit

a motion of no confidence in the President to be formulated, discussed and voted for in the Assembly within a reasonable time. Therefore, to the extent that the Rules regulating the Assembly do not vindicate the rights of members of the Assembly in this respect, they are inconsistent with section 102(2) of the Constitution and invalid. The declaration of constitutional invalidity is suspended for six months to allow the National Assembly to correct the defect.

In relation to the appeal the majority held that on a proper reading of the Rules, the Speaker acting alone has no residual power to schedule a motion of no confidence in the President to be debated and voted on in the Assembly and that in any event the relief sought in the appeal has become moot.

A minority judgment written by Jafta J (Mogoeng CJ, Mhlantla AJ and Zondo J concurring) held that the applicant has not made out a case for the granting of direct access to this Court because it is not in the interests of justice to entertain the matter when the Assembly has already begun amending its Rules. The separation of powers doctrine precludes the judiciary from intervening in matters that fall within the domain of Parliament except where the intervention is mandated by the Constitution. It was stated that in this case the necessary justification was not shown. Therefore the minority would have denied direct access.