



## IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Marius Kruger v President of RSA and Others**

**CCT 57/07  
[2008] ZACC 17**

**Judgment Date: 2 October 2008**

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### **MEDIA SUMMARY**

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*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.*

In this case, the Constitutional Court had to consider whether two Proclamations issued by the President of the Republic of South Africa were valid. Both Proclamations were made to bring certain sections of the Road Accident Fund Amendment Act 19 of 2005 (the Act) into force. The first, published on 19 July 2006 erroneously brought the incorrect sections of the Act into operation on 31 July 2006. The second, published on 31 July 2006 was aimed at correcting the error in the first Proclamation. The Pretoria High Court had declared the first Proclamation invalid but had not considered the validity of the second Proclamation. The Constitutional Court considered the validity of both the first and second Proclamations.

Three judgments were prepared: the judgment of Skweyiya J, supported by a majority; one by Jafta AJ and another by Yacoob J. The net effect of all three judgments is that the President's error can be corrected without causing disruption: ultimately, the position in practice would be the same as would have been the case if the President had brought the right sections of the Act into force in the first place.

Skweyiya J, writing for the majority, held that the first Proclamation, having brought the wrong sections of the Act into force, was irrational and therefore invalid and inconsistent with the Constitution from the date on which it came into force. Skweyiya J further held that it is possible for the President to correct an error made in bringing an incorrect section of a statute into force but emphasised that this must be done clearly and properly in line with the requirements of the doctrine of rule of law. In this case the President should have withdrawn the first Proclamation and issued a fresh Proclamation bringing the correct provisions of the law into force. This the President did not do. He amended the first

Proclamation in an unclear way that would lead to uncertainty. Therefore, the second Proclamation too was invalid.

Skweyiya J, however, considered the disruption that would be caused by the order of invalidity. He found it just and equitable to make an order that would result in the first Proclamation as amended by the second to be regarded as having been in force from the date of publication and to remain in force after the date of the judgment, for a limited period of time. The President was given time to publish a new proclamation bringing the correct sections of the Act into force in clear and express language.

Jafta AJ held that through a process of severance, the first Proclamation was partly valid, the second Proclamation was valid and that the second Proclamation therefore validly amended the first.

Yacoob J agreed with Skweyiya J that both Proclamations were invalid but on a different basis. He held that the second Proclamation was not, on the evidence, published before the first Proclamation came into force and therefore the second Proclamation could not validly amend the first Proclamation.