



CONSTITUTIONAL COURT OF SOUTH AFRICA

Poverty Alleviation Network and Others v President of the Republic of South Africa and Others

CCT 86/08

Date of Judgment: 24 February 2010

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.

Today the Constitutional Court delivered judgment in an application brought by the residents of Matatiele, asking the Court to declare unconstitutional and invalid the Constitution Thirteenth Amendment Act of 2007 (Thirteenth Amendment Act) and the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Act of 2007 (Repeal Amendment Act) in so far as the Acts seek to relocate the Matatiele Municipality, formerly in KwaZulu-Natal, in the Eastern Cape.

The applicants challenged the Acts on two grounds. Firstly, they contended that the way in which public participation had been facilitated by the relevant provincial and national legislatures had not been in compliance with the Constitution. Secondly they contended that the lawmakers had exercised their powers to amend the Constitution irrationally. The arguments on the first ground were that (a) the government had failed to consult exclusively with the residents of Matatiele as a discrete group, (b) the National Assembly had failed to receive oral submissions from interested parties and (c) Parliament and the KwaZulu-Natal Legislature had failed to consider their submissions. The applicants also argued that for public participation to be meaningful, in this case, it would require the participation to have a direct outcome on the resulting legislation. As to the second ground, the applicants alleged that the legislation was politically motivated and, thus, irrational.

The Government respondents disputed the applicants' contentions. They submitted that the Acts had been passed in accordance with the Constitution.

In a unanimous judgment, Nkabinde J found that from the content of various transcripts of public hearings, held both at national and provincial level, and from the minutes of meetings of the Portfolio Committees on Justice and Constitutional Development and

Provincial and Local Government, as well as from the minutes of the meetings of the National Council of Provinces' Select Committee, it was clear that public participation had been facilitated by both Parliament and the KwaZulu-Natal Legislature. She held that the Minister had published both the Thirteenth Amendment Bill and the Repeal Amendment Bill for public comment in accordance with section 74(5)(a) of the Constitution and that persons wishing to comment on the proposed amendment had been invited to send their written submissions. Nkabinde J further found that in reaction to the invitation by the Minister for Local Government for public comments on the Bills, the Matatiele/Maluti Mass Action Committee had, in fact, submitted full written comments on those Bills. She concluded that public participation had indeed been facilitated by both Parliament and the KwaZulu-Natal Legislature. Nkabinde J rejected the applicants' argument that it was only the residents of Matatiele who had to be consulted in the law-making process.

Nkabinde J also found that Parliament and the provincial legislatures have a broad discretion in determining how best to fulfil their constitutional obligation to facilitate public involvement, provided that they act reasonably. She emphasised that citizens must be provided with a meaningful opportunity to be heard in the making of the laws that will govern them.

On the issue relating to the rationality of the impugned legislation Nkabinde J held that what is required is a link between the means adopted by the legislature and the legitimate governmental end sought to be achieved. She emphasised that it is not for courts to decide in which province people must live or to second-guess the option chosen by Parliament and the provincial legislatures to achieve their policy goals. She held further that a court cannot interfere with legislation simply because it disagrees with its purpose or the means by which the purpose is achieved, unless it can be shown that the objective is arbitrary or capricious.

The Court thus dismissed the application and ordered each party to pay its own costs.