

**Member of the Executive Council for Local Government and Development Planning of
the Western Cape Province and Another v Paarl Poultry Enterprises CC t/a Rosendal
Poultry Farm
Constitutional Court - CCT38/01
14 December 2001**

JUDGMENT SUMMARY

This case arises because an enterprise in Paarl tried to resist a claim against it by a district council for levies, relying on a High Court judgment that district councils in the Western Cape had been wrongly elected during the period in which the levies were claimed. It concerns the local government transition process for the whole of the Western Cape except for the Cape Town metropolitan area. The Local Government Transition Act (Act 209 of 1993) provided for district councils to be elected from members of local, rural and representative councils as well as from remaining areas. The Act did not initially require district councils to be elected on a basis of proportional representation and district councils in the Western Cape were accordingly not elected on that basis.

When the Act was amended in 1996 to require district councils to be composed according to proportional representation from the beginning of July 1997, no one made any regulations in terms of which district councils in the Western Cape could be reconstituted to comply with the amendment. Consequently, the Cape of Good Hope High Court held in July 1998 that these district councils had been “improperly elected” since 1 July 1997 and directed the Member of the Executive Council responsible for Local Government in the Western Cape to put the matter right in sixty days. The MEC enacted Proclamation 52 of 1998 which made detailed provision for district councils to be elected according to proportional representation by the end of January 1999. But it did more. Section 10, a savings provision, purported to validate all acts and decisions of district councils during the period of about eighteen months when they would, according to the order of the High Court, have been “improperly elected”.

The Winelands District Council sued Paarl Poultry Enterprises CC during the first half of 1998 for the recovery of certain levies. One of the defences taken by Paarl Poultry was that it did not have to pay the levies because certain steps connected to the case had been taken and summons issued whilst the district council had not been properly elected according to the High Court’s July 1998 judgment. The district council relied on the savings provision which was to the effect that all acts and decisions were valid anyway. Paarl Poultry countered that this section was invalid because it aimed at transforming an unlawfully constituted council into a lawful one. In a judgment delivered earlier this year, the Cape of Good Hope High Court ruled in favour of Paarl Poultry. The MEC and the district council applied to the Constitutional Court for leave to appeal.

The Constitutional Court in its judgment began its analysis by broadly describing the way in which non-metropolitan or rural local government had developed from 1993 until the end of 1996 and concluded that the MEC did have the authority to make regulations by which district councils in the Western Cape were to be reconstituted on the basis of proportional representation.

The Constitutional Court said, however, that the savings provision that validated acts of unlawfully constituted councils could fall beyond the authority of the MEC only if district

councils in the Western Cape were in fact unlawfully constituted at the relevant time. The Court agreed with the High Court's July 1998 judgment that the MEC was obliged to make laws to ensure that district councils were elected according to proportional representation to comply with the 1996 amendment to the Act. It did not follow that these councils had been unlawfully constituted from the beginning of July 1997, however. The Constitutional Court concluded that, since district councils in the Western Cape remained elected in terms of the only regulatory mechanism applicable to them, they remained lawfully constituted after 1 July 1997. This conclusion, the Court said, was more consistent with the spirit, purport and objects of the Constitution and the rule of law which envisaged an ordered society regulated by law.

The Constitutional Court consequently granted leave to appeal, allowed the appeal, and ordered that the application by Paarl Poultry Enterprises for an order declaring that the Winelands district council had been unlawfully constituted since 1 July 1997 should be dismissed.

Finally, the Constitutional Court said that even if the savings provision were invalid, there would have been compelling reasons to attach conditions to the order to enable district councils to recover rates and taxes levied in good faith.