

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

African National Congress v United Democratic Movement and Others

CCT 43/02

Explanatory Note

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.

This judgment delivered this morning relates to an order made by the Court last month when it declared legislation permitting "floor crossing" in national and provincial legislatures unconstitutional for procedural reasons. In order to give time for reflection to those who had changed their political allegiance in the belief that the legislation was valid, the Court extended an earlier freezing order for a further 18 days. When this period of protection expired, five members of the KwaZulu-Natal Provincial Legislature who had crossed the floor, were replaced.

Fresh legislation aimed at allowing floor crossing in national and provincial legislatures was published for comment and the ANC applied for a further extension of the protection until Parliament had accepted or rejected this new legislation. In a separate application the Minister for Justice and Constitutional Development asked the Court to clarify an alleged ambiguity in its order and judgment as to whether the legislation had been declared invalid with retrospective effect to when it was passed. Alternatively, he asked for an order effectively reinstating the five members of the legislature, pending the outcome of the constitutional amendment. The applications were opposed by the Inkatha Freedom Party, the Democratic Party, the Pan Africanist Congress, the Premier of KZN and four individuals who had been sworn in as new members of the KZN Legislature.

In a unanimous judgment prepared by the Chief Justice, the Court stresses that there has to be finality in litigation, that it would be intolerable and could lead to great uncertainty if courts could be approached afterwards to reconsider final orders and that the Court's limited power to vary its orders has to be very sparingly used.

The Court finds that there is no ambiguity in its earlier order which needs to be explained, corrected or supplemented. The ANC's application for a further extension of the freezing order and the Minister's alternative claim for reinstatement of the five members were brought after the protective provisions of the order had already expired. Even if it is permissible to extend an expired order or to make the substitution proposed, neither the proposed amendment to the Constitution nor any of the other circumstances referred to in the evidence justifies such drastic action.

The Court therefore dismissed the applications and ordered the ANC and the Minister to pay costs.