



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**AParty and Another v The Minister for Home Affairs and Others; Moloko and Others v  
The Minister for Home Affairs and Another**

**CCT 06/09 and CCT 10/09  
[2009] ZACC 4**

**Date of Judgment: 12 March 2009**

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### MEDIA SUMMARY

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

On Wednesday 4 March 2009 the Constitutional Court heard an application for confirmation of an order of constitutional invalidity made by the High Court in Pretoria in respect of section 33(1)(e) of the Electoral Act 73 of 1998 (Electoral Act) and regulations promulgated thereunder. The Court simultaneously heard two applications for direct access which challenged similar provisions of the Electoral Act and the Regulations, but also sought other relief which was broader in scope. One application was brought by AParty, a recently registered political party and Mr Pepperell who is a South African working in Dubai. The other was brought by Mr and Mrs Moloko, South Africans working in Vancouver, as well as ten others. The Court has found it convenient to prepare separate judgments in the confirmation proceedings and the direct access applications, respectively, which have been delivered contemporaneously.

The applicants in the direct access matters, like the applicant in the confirmation proceedings, sought an order declaring parts of section 33 of the Electoral Act unconstitutional on the basis that they unfairly denied certain categories of South African citizens living abroad, who are registered voters, the right to vote. They also sought relief broader than that sought by Mr Richter in the confirmation proceedings, declaring that South African citizens abroad who are not registered voters be allowed to register and vote in the upcoming general elections.

Ngcobo J, writing for a unanimous Court, concluded that there must be compelling reasons to grant direct access to this Court. In respect of the applicants' challenge to section 33 of the Electoral Act, Ngcobo J held that as the Court was already seized with the issue in the *Richter* confirmation proceedings, the Court was not sitting as a court of first and last instance on this issue. Given the similarities between the arguments raised in both the confirmation proceedings and the direct access applications insofar as they related to section 33(1)(e) of the

Electoral Act, Ngcobo J granted direct access in relation to the constitutional challenge to that section Electoral Act and the relevant regulations.

However, Ngcobo J held that the direct access applications, insofar as they raised challenges to provisions of the Electoral Act and regulations which deal with the requirements for registering as a voter abroad, fell to be dismissed. This was for three main reasons. First, these challenges were fundamentally different to those based on section 33 of the Electoral Act, in that they dealt with the registration of voters. These issues had not been traversed by a lower court, and this Court would therefore be in the undesirable position of sitting as a court of first and last instance. Second, it is not desirable for complex issues to be determined in circumstances of extreme urgency. The relevant legislation has existed since 2003 – the applicants failed to explain why they had not approached a court for relief much earlier. Third, only two of the applicants in these matters were, in fact, not registered as voters, and they had not satisfactorily explained why they had not taken steps to register, in line with the duty placed on them by the right to vote.

In the result, Ngcobo J granted direct access in relation to the challenges to section 33 of the Electoral Act, and granted the same relief ordered by the Court in the *Richter* matter. The applications for direct access in relation to the challenges to registration provisions of the Electoral Act were dismissed.