



CONSTITUTIONAL COURT OF SOUTH AFRICA

Moutse Demarcation Forum and 15 Others and The President of the Republic of South Africa and 17 Others

Case No: CCT 40/08

**Date of Hearing: 10 March 2011
Date of Judgment: 23 August 2011**

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.

On Tuesday, 23 August 2011 the Constitutional Court delivered judgment in an application that challenged the constitutional validity of a constitutional amendment and a law to the extent that this legislation transferred Moutse 1 and Moutse 3 from the province of Mpumalanga to the Limpopo province. The challenge was brought by a community organisation and certain residents. The application was opposed by the national government and by the provincial legislatures and governments of the provinces of Mpumalanga and Limpopo respectively.

Before the challenged laws were passed the areas of Moutse 1 and Moutse 3 fell under the province of Mpumalanga, as part of separate local municipalities located within the Greater Sekhukhune District Municipality. The area of Sekhukhune Municipality straddled the provincial boundary between Limpopo and Mpumalanga. This municipality and others like it were referred to as cross-boundary municipalities.

The purpose of the challenged laws was to abolish the cross-boundary municipalities by altering provincial boundaries. Areas like Moutse were transferred from one province to the other.

The applicants' attack on these laws was based on two grounds. First, they argued that the laws were irrational because they perpetuated boundaries drawn by the apartheid-era government in pursuit of its repulsive policy of separate development. Second, they contended that the Mpumalanga Provincial Legislature was required to and had failed to consult reasonably with the residents of Moutse 1 and 3, the people most pertinently affected by the changes. This they said was so because they were given too little notice of the hearing, the hearing itself was too brief and because the report of the Portfolio Committee to Parliament did not reflect the objections of the community sufficiently.

Reasonable consultation may take whatever form chosen by a legislature. In this case the provincial legislature opted for public hearings. A hearing was held in Moutse 1 but not in Moutse 3 until the community held a protest march to the Union Buildings in Pretoria on 6 December 2005. Following the march, a hearing was held in Moutse 3 on 8 December 2005 at which the community, through its representatives, voiced its opposition to the transfer of the area to Limpopo. The Portfolio Committee recorded this but recommended to the Provincial Legislature that the laws be supported. The recommendation was endorsed by the Provincial Legislature.

The Constitutional Court rejected both grounds of attack advanced by the applicants and dismissed the application. However, it ordered the Minister for Provincial and Local Government to pay costs caused by the postponement of the hearing on various occasions.