CONSTITUTIONAL COURT OF SOUTH AFRICA

Mpho Ramakatsa and Others v Elias Magashule and Others

CCT 109/12

Date of hearing: 20 November 2012 and 29 November 2012

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 18 December 2012, the Constitutional Court gave reasons why, on 21 November 2012 it granted to leave to appeal against a judgment of the Free State High Court. The applicants, six members of the African National Congress (ANC) in the Free State had asked the High Court, to declare invalid a meeting of the Free State Provincial Executive Committee (PEC) of the ANC that had been held in June 2012. The basis of the application was that there had been irregularities in the branch processes by which branches had elected delegates to the conference.

All 25 members of the Free State PEC and the ANC's national formation were the respondents in the High Court and the Constitutional Court. The High Court did not reach the merits of the application, but dismissed it on certain procedural grounds:

- that the applicants should not have published the notice of motion in the press without court authorisation, nor they should they have refused to give people a copy of the papers unless they intended to oppose the application;
- that at least those branches where there had been irregularities should have been joined;
- the PEC had not been joined;
- there had not been proper notice or service, except on one respondent;
- that the application was premature; and
- the applicants should have exhausted their internal remedies.

Yacoob J, writing for the majority held that none of the grounds was sufficient not to hear the application:

- it was not necessary for the applicant to have served on everyone, it was prudent of the applicants to have published the notice of motion in t the press and it was reasonable to give voluminous papers only to those people who wished to oppose the application;
- there was no need for branches to be joined mainly because no relief had been claimed against them;
- all the notice and service findings were erroneous and were resolved by the fact that all the parties had filed papers and 25 respondents were represented in the High Court;

- that the application was not premature in relation to setting aside the PEC conference that had taken place before the application was launched; and
- it was not reasonable to expect the applicants to appeal to the national conference of the ANC because that was a conference at which those people that the applicants objected to would be present.

The High Court should have considered the case on its merits.

Writing for the majority on the merits, Moseneke DCJ and Jafta J held that constitutions and other rules of political parties must be consistent with the Constitution of the Republic (Constitution). They held further that in regulating their internal affairs, political parties must facilitate the exercise of political rights entrenched in section 19 of the Constitution.

The majority found that the appellants proved irregularities in the preparation process leading up to the Provincial Conference. These irregularities, held the majority, amounted to a violation of the appellants' right to participate in the activities of the ANC and a breach of the ANC's constitution as well as its Membership Audit Guidelines. As a result the majority held that the irregularities nullified the Provincial Conference.

Writing for the minority Froneman J held that although the matter raised a constitutional issue, it was not in the interest of justice to grant leave. In his view the appeal could have been directed to the Full Court of the High Court or the Supreme Court of Appeal.

On the merits, Froneman J found that the appellants failed to prove that their grievances were not resolved by the ANC. He held that this was the only case the ANC was expected to meet. For these reasons he would have dismissed the appeal.