

## IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Xolisile Zondi v Member of the Executive Council for Traditional and Local Government Affairs and Others**

**CCT 73/03**

**Decided on 29 November 2005**

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### **MEDIA SUMMARY**

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

On Tuesday 29 November 2005 the Constitutional Court handed down a unanimous judgment in an application by the MEC for Traditional and Local Government Affairs, KwaZulu-Natal for an extension of the period of suspension of an order declaring invalid certain provisions of the Pound Ordinance, KwaZulu-Natal. On 15 October 2004, the Constitutional Court in the matter of *Zondi v MEC for Traditional and Local Government Affairs and Others* declared invalid certain provisions of the Pound Ordinance. The Court, however, suspended the order of invalidity for a period of twelve months in order to allow the Provincial Legislature of KwaZulu-Natal to correct the constitutional defects in the Pound Ordinance. The period of twelve months expired on 15 October 2005.

On 23 September 2005 the MEC requested the Court to extend the period of suspension for a further period of twelve months. This application was not opposed by Mrs Zondi who was an applicant in the earlier application. In support of its

request, the MEC stated that unforeseen circumstances had resulted in delays in the finalisation of the legislation. These included the appointment of a new MEC and the head of the Department, and the restructuring of the Department. In addition the MEC pointed out that a draft Bill that was in existence when the original court order was made, had to be rejected and the drafting process had to start afresh. The MEC assured the Court that the Bill is well under way and would be enacted into law by June 2006.

The Court had to consider whether it had the power to extend the period of the suspension of the declaration of invalidity. In a unanimous decision, Justice Ngcobo held that the Court had the power to do so under common law, the Constitution and its original order. He held that the Court has the power to extend the suspension period whenever it is just and equitable to do so.

However, the Court warned that it is necessary to bear in mind that when a law is declared invalid it is not just the parties to the litigation who are affected, the public as a whole has an interest, particularly those likely to be covered by the law. What is in issue is not just potential disrespect for the time limits in the court order, but the interests of the public. Reasons that justify or at least explain failure to meet the time limits in the court order, must be set out fully, candidly, timeously and in a manner that conforms with the rules of the Court. Those responsible for drafting remedial legislation should not assume that as a matter of course and in the public interest an extension of time period will be granted. If a proper case for extension is not made out in appropriate way then the drafters of the new legislation must be aware that they run the risk of the request for an extension of time being refused.

The Court, however, accepted that in this case there were factors that combined to produce a delay which could not have been foreseen. The Court also accepted that the legislative process was well under way and that in all probability the remedial legislation will be enacted by June 2006. A factor which weighed heavily with the Court in granting the extension of time was the fact that the public will suffer considerable prejudice if the order of suspension were not extended. There will be no mechanism for dealing immediately and effectively with trespassing and straying animals. The Court concluded therefore that it was just and equitable to extend the period of suspension of the declaration of invalidity by a further twelve months to 15 October 2006.