

**MEMBER OF THE EXECUTIVE COUNCIL FOR DEVELOPMENT PLANNING AND  
LOCAL GOVERNMENT IN THE PROVINCIAL GOVERNMENT OF GAUTENG v  
THE DEMOCRATIC PARTY AND OTHERS**

**CCT 33/97**

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Explanatory Note

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

The Member of the Executive Council for Development Planning and Local Government in Gauteng (the MEC) applied to the Witwatersrand High Court for an order declaring that the Eastern Metropolitan Substructure of the Greater Johannesburg Metropolitan Council may pass its annual budget by a simple as opposed to a two-thirds voting majority. The application failed, and the matter came to the Constitutional Court on appeal.

The President of the Court, Judge Chaskalson, wrote a unanimous judgment on the procedural aspects of the case. In particular, the question of the circumstances in which a party will be granted leave to appeal directly to the Constitutional Court, thus bypassing the Supreme Court of Appeal, was discussed. The Court stated that leave to appeal directly to the Constitutional Court would be granted if it were in the interests of justice to do so.

The interests of justice must be determined on the facts of each case. Relevant considerations include the importance of the constitutional issues raised, the urgency of the case, possible savings of both time and money in having the matter decided by this Court and the prospects of success on appeal. Judge Chaskalson found that the interests of justice favoured the appeal in this case being heard directly by the Constitutional Court since the matter raised constitutional issues only and was of great urgency.

Judge Yacoob wrote a separate unanimous judgment dealing with the merits of the case. The question before the Court was whether a provision in the Local Government Transition Act (the LGTA) requiring a two-thirds majority of the members of a local government council for the approval of its budget was constitutional. The MEC argued that the LGTA provision conflicted with a provision in the Constitution, dealing with local government, which states that the budget of a local government has only to be approved by a simple majority of its members.

The Court stated that the simple majority requirement in the Constitution had to be reconciled with the transitional provisions contained in a schedule to the Constitution. One of these makes reference to the continued application of the two-thirds majority requirement in the LGTA until 30 April 1999. The Court found that the two-thirds requirement in the LGTA is not inconsistent with the Constitution, because whilst the LGTA provision is made operational until 30 April 1999 by the transitional provisions in the Constitution, the simple majority requirement in the Constitution is to apply thereafter.

The MEC also argued that the provision in the LGTA giving him or her the power to impose a budget if a local authority fails to pass it timeously offends the principles of “democratic

government”, “autonomous local government”, “transparency in local government” and “separation of powers” in the Constitution. The Court said that on the assumption that these principles were enshrined in the Constitution, such a mechanism is not unconstitutional for various reasons including that it is a necessary deadlock-breaking mechanism to prevent paralysis in voting procedures.

The Court therefore upheld the two-thirds majority budget approval requirement in the LGTA, dismissing the MEC’s appeal.

29 May 1998