



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Mario Gaspare Oriani-Ambrosini, MP v Maxwell Vuyisile Sisulu, MP Speaker of the
National Assembly**

Case no. CCT 16/12

**Date of Hearing: 07 August 2012
Date of Judgment: 09 October 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.

The Constitutional Court handed down judgment today concerning the constitutional validity of certain provisions of the Rules of the National Assembly.

In 2009 Mr Oriani-Ambrosini, a member of Inkatha Freedom Party and of Parliament, sought to introduce the National Credit Act Amendment Bill in the National Assembly, in terms of section 73(2) of the Constitution. He did so without having obtained the permission required by the impugned Rules. For this reason, the Speaker of the National Assembly refused him permission to introduce the Bill. Mr Oriani-Ambrosini launched proceedings in the Western Cape High Court challenging the constitutional validity of those Rules which require an individual member of the Assembly to obtain permission before she or he may introduce a Bill. The High Court dismissed the challenge. He then applied to this Court for leave to appeal against this judgment.

Writing for the majority, Mogoeng CJ held that the Rules which provide for the permission requirement are inconsistent with the Constitution and therefore invalid. The majority's interpretation of sections 55(1)(b) of the Constitution, which empowers individual members of the Assembly to initiate or prepare legislation, 73(2), which empowers them to introduce a Bill and 57, which vests the authority to make rules in the Assembly, led them to the conclusion that the Assembly may not create rules which have the effect of vitiating or undermining the powers given by the Constitution. It held that whilst the Assembly is entitled to regulate its business in a manner that it deems best, it may not do so in a way that renders the powers of individual members hollow or inconsequential, but rather in a way that facilitates the exercise of those powers. Further, it held that the meaningful exercise of the individual power to initiate or prepare legislation and introduce Bills in the Assembly is vital to the promotion of the constitutional values of participatory and representative democracy, openness, transparency, accountability and public involvement, which values must be taken into account by the Assembly when making its rules.

The majority declared those provisions of the Rules which impose, reinforce or are inextricably linked to a permission requirement, constitutionally invalid, severed them from the remainder of the Rules and found in favour of Mr Oriani-Ambrosini.

In a minority judgment in which Yacoob J concurred, Jafta J held that the application should be dismissed. The dismissal was based on Mr Oriani-Ambrosini's failure to challenge the Rules that regulate the introduction of a Bill in the Assembly whereas he paid particular attention to the Rules that deal with the initiation or preparation of legislation. Further, he held that the Rules were in any event reasonably capable of an interpretation which would save them from a declaration of constitutional invalidity.