

Ex Parte: Ahmed Raffik Omar

**Constitutional Court – CCT 32/03**

**Decided on: 11 September 2003**

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**Media Summary**

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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.*

Mr Omar was separated from his wife Mrs Halima Joosab in January 2003. According to Mr Omar, since the separation, Mrs Joosab has secured several protection orders against him in terms of section 8 of the Domestic Violence Act, 116 of 1998. Mr Omar then applied to the High Court in Pietermaritzburg to have section 8 declared unconstitutional because it violates several of his constitutional rights including his right to freedom and the security of person. According to Mr Omar, the High Court struck the matter off the roll because the Government and the Minister abided the decision of the Court and had not lodged affidavits explaining their reasons for not opposing the application. The applicant brought an application directly to this court for constitutional relief without notice to the government, the Minister or Mrs Joosab. The Constitutional Court held that it will not grant an application for direct access to consider a challenge to the constitutionality of legislation where the minister responsible for the legislation is not a party to the application. It also held that although the applicant raises important constitutional issues, this is not an appropriate case for the Court to determine the constitutional issues without the matter being entertained first by the High Court. The Constitutional Court accordingly unanimously refused the application for direct access.