



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Premier: Limpopo Province v Speaker: Limpopo Provincial Legislature and Others**

**Case No.: CCT 94/10  
[2011] ZACC 25**

**Date of Hearing: 24 February 2011  
Date of Judgment: 11 August 2011**

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### MEDIA SUMMARY

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*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 Thursday, 11 August 2011, the Constitutional Court gave judgment in a case about the power of provincial legislatures to legislate on their own financial management.

The Premier of the Limpopo Province had doubts about the constitutionality of the Financial Management of the Limpopo Provincial Legislature Act, 2009 (the Bill) and referred it to the Constitutional Court for a decision on its constitutionality.

The Limpopo Provincial Legislature passed the Bill and submitted it to the Premier for his assent and signature. The Premier had reservations concerning the competence of the Provincial Legislature to pass the Bill, and referred the Bill to the Constitutional Court for adjudication in terms of a provision of the Constitution.

The Constitution allows provincial legislatures to pass legislation with regard to certain listed functional areas and on any matter expressly assigned to them by national legislation. Otherwise provinces have the power to pass legislation only if a provision of the Constitution envisages the enactment of provincial legislation on the matter.

The Premier contended that the power did not fall within the functional areas listed in the Constitution, had not been expressly assigned by Parliament and was not envisaged in the Constitution. The Speaker of the National Assembly, the Chairperson of the National Council of Provinces and the Minister for Finance agreed.

The Speaker of the Limpopo Provincial Legislature accepted that financial management falls outside the listed functional areas and ultimately that the power had not been expressly assigned. The Speaker contended however that the power to pass the Bill was covered by the provisions of the Constitution concerning the basic values and principles governing public administration and those concerned with financial matters.

Writing for the majority, Ngcobo CJ concluded that the Premier's reservations were justified. Ngcobo CJ emphasised that a defining feature of our constitutional scheme is that the legislative powers of the provinces are enumerated and clearly defined, while those of Parliament are not. Contrasting the plenary power that resides in Parliament with the limited powers that have been given to provincial legislatures, Ngcobo CJ held that provincial legislatures do not enjoy the power to pass the Bill. He further held that none of the provisions of the Constitution concerning the public administration or financial matters envisage the passage of the Bill. The Bill was therefore found to be unconstitutional.

Froneman J concurs in the judgment of the Ngcobo CJ but on the basis that, although he is satisfied that the provincial legislature may make Rules about its own budgetary processes, transparency and expenditure control, as well as supply-chain management it has no power to legislate on these matters. This is because legislation would be unnecessary.

In a dissenting judgment, Yacoob J, joined by Cameron J, concluded that the Bill was constitutional. They found that certain provisions of the Constitution concerning financial matters do indeed envisage that a Provincial Legislature may pass legislation concerning the management of that Legislature's very own assets.

Because legislation similar to the Bill has been passed by provincial legislatures in the Eastern Cape, the Free State, Gauteng, Mpumalanga and the North West, the Constitutional Court ordered the Speakers as well as Members of the Executive Council responsible for financial matters in each of these provinces to be joined. The Constitutional Court will hear argument on Tuesday 8 November 2011 on why the legislation in these provinces should not also be declared unconstitutional.