

Explanatory Note

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 constitutionality of particular provisions of the Payment of Salaries, Allowances and Other Privileges to the Ingonyama Amendment Bill (the Ingonyama Bill) and the KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Bill (the Amakhosi Bill) was challenged by African National Congress members of the KwaZulu-Natal legislature. The issue was referred to the Constitutional Court by the Speaker of the KwaZulu-Natal legislature. As the disputed issues were similar, the two matters were heard together.

The Bills sought to amend and re-enact legislation as laws of the KwaZulu-Natal province which had been passed by the KwaZulu legislature prior to the 1993 Constitution coming into force. Challenges were made to new provisions of the Acts (s 19A of the Amakhosi Act and ss 2(3)-(7) of the Ingonyama Act) which prohibited the Ingonyama (the Zulu King) and other traditional leaders from accepting any remuneration other than in terms of the Acts. If any such remuneration was accepted, the Acts oblige the recipient to deposit it into the Provincial Revenue Fund. The Court held that because laws dealing with the appointment and powers of traditional leaders were within the competence of the provinces, legislation providing for the payment of remuneration to such leaders was also within this competence, as it was part and parcel of their appointment.

It was argued that the amendment Bills violated s28(1), s28(2) and s28(3) of the Constitution - the right to acquire rights in property and not to be deprived thereof without compensation. The Court rejected this argument, holding that the prohibition against traditional leaders receiving other remuneration in their official capacity was a reasonable and not uncommon condition of an appointment to an office. As this was valid, a consequence of the breach of that condition could not be said to constitute an unlawful deprivation of property.

It was argued that the amendment Bills violated s26(1) of the Constitution - the right to freely engage in economic activity and to pursue a livelihood. This argument was also rejected, the Court holding that the amendments did not impose any restriction on the right since the traditional leaders concerned were free to vacate their offices and to engage in any other economic activity they chose. Further, they were free to engage in other economic activity not inconsistent with their status as traditional leaders.

The Court rejected an argument that, because traditional leaders were prohibited by the amendments from accepting payments from other provincial governments, the amendments encroached upon the legislative competences of such provinces.

It was argued that s 19A(5) of the Amakhosi Bill and s 2(7) of the Ingonyama Bill violated s 126 of the Constitution in that they purported to confer upon the provincial legislation a right

of precedence over an Act of Parliament. The Court rejected this argument, holding that these provisions were capable of a narrower interpretation which would avoid a conflict with the Constitution. This interpretation was that the provincial legislature intended to provide for the occupation of the field of traditional leaders as fully as it was entitled to do ie to the extent that it was not overridden by national legislation in terms of s 126. The Court held that all provincial laws are liable to be overridden by an Act of Parliament within the categories referred to in s126(3). The question whether the amendments, if enacted, would be inconsistent with the national Remuneration of Traditional Leaders Act, and if so, whether in terms of s126(3) they would prevail over, or be subordinate to such legislation, were not relevant to the constitutionality of the amendments and therefore the Court left these questions open.

It was also argued that s19A of the Amakhosi Bill (which requires any other remuneration received by a traditional leader to be deposited into the Provincial Revenue Fund) constituted a form of taxation which was outside provincial competence. The Court rejected this argument holding that the obligation to account for monies received in breach of conditions of appointment to an office was not a tax but a normal consequence of such breach. This argument was formulated differently in respect of the same provisions contained in the Ingonyama Bill. This, it was argued here, violated s 13 of the Constitution as it amounted to a seizure of the Ingonyama's private possessions. The Court also rejected this argument, holding that as the underlying prohibition was valid, the ancillary obligation to account was not a seizure of property.

The judgment of the Court was delivered by Chaskalson P and was concurred in by the other members of the Court.