



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**South African Transport and Allied Workers Union and Another v Jacqueline Garvas and Others**

**Case no. CCT 112/11  
2012 ZACC 13**

**Date of Hearing: 09 February 2012  
Date of Judgment: 13 June 2012**

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### MEDIA SUMMARY

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

On 13 June 2012, the Constitutional Court handed down judgment about the constitutionality of a law which makes organisers of gatherings liable for damages caused by the gathering unless they took all reasonable steps to avoid the damage and they did not reasonably foresee that damage. The Supreme Court of Appeal upheld a decision of the Western Cape High Court saying that the law was valid.

The South African Transport and Allied Workers Union (SATAWU) had organised a gathering of thousands of people through the City of Cape Town to register employment-related concerns. Some 50 people had lost their lives in the course of SATAWU's protracted strike action before the gathering. During the gathering, much property including private property was damaged.

In response to a claim for damages made by people who claimed that they suffered loss as a result of the gathering, SATAWU challenged the constitutional validity of the law that imposed liability on organisers. The Union contended that the defence allowed by the law is non-existent and unjustifiably limits the right to freedom of assembly in the Constitution.

In a majority judgment, Mogoeng CJ held that the law aims to afford victims effective recourse where a gathering becomes destructive and results in injury, loss of property or life. The majority held that the defence provided for by the law is viable and that the limitation on the right to freedom of assembly in section 17 of the Constitution is reasonable and justifiable, because it serves an important purpose and reasonably balances the conflicting rights of organizers, potential participants and often vulnerable and helpless victims of a gathering or demonstration which degenerates into violence. Mogoeng CJ emphasised that the reasonable steps taken on the one hand and reasonable foreseeability on the other hand

were inter-related. Organisers are obliged at all times to take reasonable steps to prevent all reasonably foreseeable conduct that causes damage and the reasonable steps must be of the kind that render the conduct causing damage unforeseeable. For these reasons, the majority dismissed the appeal.

In a concurring judgment, Jafta J reasoned that the appeal should be dismissed, on the basis that SATAWU had failed to prove that the law limits the right to freedom of assembly, or that the defence that it creates is irrational.