



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Women's Legal Centre Trust v President of the Republic of South Africa and Others
(with the United Ulama Council of South Africa and Others as Amici Curiae)**

**CCT 13/09
[2009] ZACC 20**

Date of Judgment: 22 July 2009

MEDIA SUMMARY

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

The Constitutional Court today ruled that applications challenging the legislative programme and duties of the government should not be brought directly to the Court, but must first be lodged in the High Court and go through the ordinary judicial processes before reaching the Court. The Court dismissed an application by the Women's Legal Centre (the Centre) which sought an order to oblige the President, the Ministers for Justice and Constitutional Development and for Home Affairs, and the principal office-bearers of Parliament to enact legislation regulating Muslim marriages.

On 20 May 2009 the Constitutional Court heard an application for direct access to the Court. The Centre's case was that the President and Parliament failed to fulfil constitutional obligations because no legislation has been passed recognising and regulating marriages concluded under Islamic law. This failure, the Centre argued, violates numerous rights protected in the Bill of Rights.

The Court dealt with a preliminary point only – whether the Centre could bring its case as a direct access application. It heard argument on two narrow questions. First, did the obligations the Centre sought to enforce fall within the exclusive-access provision of the Constitution (which provides that “Only the Constitutional Court may decide that Parliament or the President has failed to fulfil a constitutional obligation”)? Second, if the obligations do not fall within that provision, should the Court anyhow hear the Centre's case directly?

The Court's judgment accordingly does not decide whether Parliament may be under an obligation to enact legislation to recognise Muslim marriages. Nor does it consider whether such legislation would be consistent with the equality, dignity, freedom of religion or other provisions of the Bill of Rights.

Writing for a unanimous Court, Cameron J held that the exclusive-access provision of the Constitution, section 167(4)(e), focuses on specific agents – it mentions only the President and Parliament.

By contrast, the obligation to enact legislation to fulfil the rights in the Bill of Rights falls on a wide range of constitutional actors. These include the Cabinet, organs of state, independent institutions under Chapter 9 of the Constitution, Parliament and the President. The obligation does not fall on the President and Parliament alone. For this reason, the obligation to enact such legislation, if it exists, can be considered by the High Courts. It does not fall within this Court's exclusive jurisdiction.

Cameron J also found that the Centre's case should first be considered by the High Court and possibly later by the Supreme Court of Appeal. The Constitutional Court seldom grants direct access outside its exclusive jurisdiction. To hear the Centre's case directly, bypassing the ordinary processes of litigation, would mean that this Court would hear and determine the application as a court of first and final instance. Since the Centre's case involved controversial issues of wide public interest in respect of which many parties might wish to have say, and could require findings about factual issues and expert evidence, this was not in the interests of justice.