



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Islamic Unity Convention v Minister of Telecommunications; the Independent Communications Authority of South Africa; the Chairperson of the Broadcasting and Complaints Committee and the South African Jewish Board of Deputies**

**Case CCT 33/07**

**Medium Neutral Citation [2007] ZACC 26**

**Date of Judgment: 7 December 2007**

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### MEDIA SUMMARY

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*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.*

On the 11 September 2007 the Constitutional Court heard an application for the confirmation of an order of the Johannesburg High Court, invalidating various provisions of the legislative scheme which provides for the investigation and adjudication of complaints lodged with the Independent Communications Authority of South Africa (ICASA) against holders of broadcasting licences.

The applicant is a licence holder and conducts a community broadcasting service known as Radio 786. In the High Court the applicant successfully challenged the constitutionality of certain provisions of the now repealed Independent Broadcasting Authority Act 153 of 1993 (the IBA Act) and the corresponding provisions of its successor, the Independent Communications Act of South Africa 13 of 2000 (the ICASA Act) as well as certain provisions of the Complaints of Regulations and Procedures made under the IBA Act. The applicant's main attack was that the provisions and the procedures conferred investigative, prosecutorial and adjudicative powers on one body, the Broadcasting, Monitoring and Complaints Committee (BMCC), a standing committee of ICASA. [The BMCC has now been replaced by the Complaints and Compliance Committee in terms of the ICASA Act.] This was in violation of section 33, 34 and section 192 of the Constitution. The challenge against the Regulations was that in providing for witnesses to be examined through the chairperson of the BMCC at his/her discretion, they violated the normal rules of cross-examination. The Procedures were also challenged on the basis that they conferred regulatory authority on the Monitoring and Complaints Unit, a body which does not meet the requirements of section 192 of the Constitution.

Mpati AJ, writing for a unanimous court, held today that there was nothing impermissible in the conferral of investigative and adjudicative powers on the BMCC, as the legislative scheme provided for fairness, independence and impartiality, nor was there anything in the IBA Act that provided for the Chairperson to act as a prosecutor. The Court accordingly declined to confirm the findings of constitutional invalidity of the statutory provisions. The second and fourth respondents' appeals against the findings of constitutional invalidity of the Regulations and Procedures were upheld. The appeal against the finding of invalidity against the Regulations was also upheld on the basis that there was nothing unusual in cross examination being done through a Chairperson in an inquisitorial process.