



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The President of the Republic of South Africa and Others v Quagliani; The President of the Republic of South Africa and Others v Van Rooyen and Brown; Goodwin v Director-General, Department of Justice and Constitutional Development; (the Speaker of the National Assembly and the Chairperson of the National Council of Provinces intervening).

**Cases CCT 24/08 and 52/08
[2009] ZACC 01**

Judgment Date: 21 January 2009

MEDIA SUMMARY

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.

Today the Constitutional Court handed down judgment in two cases concerning challenges made to the validity and enforceability of the Extradition Agreement concluded in 1999 between South Africa and the United States. Nello Quagliani, Stephen Mark Van Rooyen and Laura Vanessa Brown are the respondents in the *Quagliani* matter. Mr Quagliani is accused of drug-smuggling into the United States. Mr van Rooyen and Ms Brown are married to each other and are together accused of fraudulently operating a clinic advertising and performing “stem cell transplants” on terminally ill patients in the United States. These three persons are currently in South Africa, and requests have been made by the United States for their extradition from South Africa to the United States. Steven William Goodwin is the applicant in the *Goodwin* matter. He is accused of fraud and theft relating to the demise of Fidentia Asset Management (Pty) Ltd, a South African company. His extradition is sought by South Africa from the United States, where he is currently detained pending finalisation of the request.

It was contended by the above persons facing extradition (the applicants) that the Extradition Agreement was invalid and unenforceable because the President did not “enter into” the Agreement as required by section 2 of the Extradition Act. Much of the work of entering into the Extradition Agreement had been performed by ministers and other officials. The applicants submitted that consequently their arrests in terms of the

Agreement were unlawful. They contended further that the Agreement was not validly approved by the National Council of Provinces (NCOP) because the delegates were not shown to have had proper mandates. Finally they submitted that the Agreement had not been incorporated into domestic law nor was it self-executing in terms of section 231(4) of the Constitution which sets out the procedure for an international agreement to be made operable in South Africa.

Sachs J wrote for a unanimous Court. On the first issue, he held that the Constitution envisaged that the President, as head of the national executive, would take the final decision to enter into an agreement. The fact that Cabinet Ministers played a role in the negotiation and signing of the Agreement was consistent with the exercise of his powers as head of the national executive.

On the second objection, he held that the applicants were barred from raising the issue of the lack of a mandate to approve the Agreement; this was because first, they had failed to join the Provinces in the proceedings, second, they lacked standing because more than eight years had passed since the NCOP adopted the resolution, and, third, that in any event a bald allegation of a lack of mandate, without evidence, was not enough to merit investigation by this Court.

On the third objection, he held that the provisions of the Agreement were enforceable to the extent that they had been anticipated and provided for by the Extradition Act, and that reading the provisions of the Extradition Act with those of the Agreement, empowered the authorities to undertake extradition proceedings. The Extradition Act furthermore presupposed extradition from other countries to South Africa.

In the result, all the applications failed. No cost orders were made. The judgment states further that last-minute applications for postponement of the delivery of the judgment were inappropriate, and gives the parties until 9 February 2009 to lodge affidavits, if they wish, concerning the costs occasioned as a result.