

**CAPE METROPOLITAN COUNCIL VERSUS THE MINISTER OF PROVINCIAL  
AFFAIRS AND CONSTITUTIONAL DEVELOPMENT AND ANOTHER**

**CCT 34\99**

---

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.*

This case concerns an application by the Cape Metropolitan Council for leave to appeal directly to this Court against the whole of the judgment and order of the Cape of Good Hope High Court. The Council challenged the constitutionality of the provisions of the Local Government: Municipal Structures Act, No 117 of 1998( the Structures Act) in the High Court on the basis that it violates provisions of the constitution which deal with the establishment of municipalities, their internal procedures and their functional and institutional autonomy. The Minister of Provincial Affairs and Constitutional Development and the South African Local Government Association opposed the application for leave to appeal to this Court on the grounds that the Council did not have reasonable prospects of success.

The Council further requested this Court to deal with this application on an urgent basis, and to hear the appeal before delivery of its judgment in the Western Cape and KwaZulu-Natal cases, in which similar constitutional challenges to the Structures Act were canvassed. These two matters had been argued together before the Constitutional Court on 24 and 25 August 1999.

In a unanimous judgment, Justice Langa held that there were no circumstances to warrant delaying the handing down of the judgment in the Western Cape and KwaZulu-Natal cases until the appeal against the High court judgment had been heard. That part of the application was accordingly refused and the request for an order to deal with the application for leave to appeal on an urgent basis was likewise refused. The Court held that if the Council had wanted to be heard in the two matters before the Constitutional Court, it should have applied to be heard as an amicus curiae in terms of the rules of the Court. No such application was made and no interest was manifested by it in taking part in those proceedings.

Given the fact that this case concerns the constitutionality of a statute which is fundamental to the restructuring of the Local Government, the Court postponed the application for leave to appeal and gave the Council leave to supplement its application for leave to appeal, and the respondents time to respond if they so wish.

15 October 1999