



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Conrad Stefaans Brummer and the Minister of Social Development and Others
CCT 25/98**

Hearing Date: 26 May 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.

On 26 May 2009 the Constitutional Court will consider a case involving the constitutional challenge to section 78(2) of the Promotion of Access to Information Act. This statute permits members of the public to request information that is in possession of the Government. Section 78(2) allows a person who is refused access to information to challenge the refusal in Court. However, the application must be made within 30 days.

The applicant is asking the Constitutional Court to answer two questions, firstly, whether the applicant should have been allowed to challenge the refusal even though he did not comply with the 30 day requirement; and, secondly, whether the requirement of 30 days is unconstitutional as it does not afford people who wish to challenge the refusal adequate time to approach the court.

The case arises out of a request that the applicant, a journalist, made to the Department of Social Development for access to certain information. The information pertained to a government tender that was awarded to a consortium. The Director-General refused this request on various grounds including that the information sought related to a case that is presently pending in the Pretoria High Court between the Department of Social Development and the consortium. An appeal to the Minister was equally unsuccessful. The applicant received notification of the decision of the Minister on 7 February 2007.

The applicant only approached the Cape High Court for relief on 25 July 2007, well after the 30 day period required by section 78(2). The application was opposed by the Minister. The High Court, while accepting that it had the power to condone non-compliance with the required 30 day period, nevertheless refused to condone non-compliance. However, it found that section 78(2) is unconstitutional as it does not give the person requesting information adequate time to approach a court for relief against refusal of access to information.

The applicant is asking the Constitutional Court to confirm an order of invalidity made by the High Court. He is also appealing against the decision of the High Court refusing to condone his non-compliance with the 30 day period. The applicant argues that the 30 day limit does not afford people seeking a claimant an adequate and a fair opportunity to seek judicial redress against refusal of access to information and therefore constitutes a violation of the right of access to information.

The Minister is opposing both the confirmation of the order of invalidity and the application for leave to appeal. While accepting that section 78(2) limits the right of access to information, the Minister argues that the limitation is nevertheless justifiable because it permits the court to condone non-compliance with the 30 day limit prescribed in section 78(2). In opposing the application for condonation, the Minister maintains that the applicant did not furnish the court with a satisfactory explanation for the delay in approaching the High Court and that therefore condonation was properly refused. In addition, the Minister submits that the applicant is not entitled to information requested as this information is subject to court proceedings presently pending in the Pretoria High Court.