



CONSTITUTIONAL COURT OF SOUTH AFRICA

Justice Alliance of South Africa (JASA) v President of the Republic of South Africa and Others; Freedom Under Law NPC (FUL) v President of the Republic of South Africa and Others; Centre for Applied Legal Studies (CALS) and Council for the Advancement of the South African Constitution (CASAC) v President of the Republic of South Africa and Others; (National Association of Democratic Lawyers of South Africa (NADEL), the Black Lawyers Association (BLA) and Mario Gaspare Oriani-Ambrosini, MP as Amici Curiae)

Case No.: CCT 53/11; CCT 54/11; CCT 62/11

Date of Hearing: 18 July 2011

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 Monday 18 July 2011 the Constitutional Court will hear three applications for direct access about the purported extension by the President of the Republic of South Africa of the term of office of the Chief Justice for 5 years. The applicants are JASA, FUL, CALS and CASAC respectively.

They contend, cumulatively, that the section 8(a) of the Judges' Remuneration and Conditions of Employment Act is inconsistent with the Constitution because section 176(1) of the Constitution provides for an Act of Parliament, and only an Act of Parliament, to extend the terms of office of any Constitutional Court judge. The second reason relied on is that the delegation of power by Parliament to the President is too wide and provides no guidelines for the exercise of the power. It is also submitted that section 176(1) precluded the extension of the term of office of a particular Constitutional Court judge, including the Chief Justice, as distinct from extending the terms of all Constitutional Court judges. The fourth argument is that, even if the President had the power to extend the term of office of the Chief Justice, the Constitution placed an obligation on that office to consult with the Judicial Service Commission and political parties before making any extension.

The NADEL and the BLA urge that even if the relevant provision of the Act is unconstitutional, the Constitutional Court should suspend the invalidity and offer Parliament an opportunity to correct the defect. They say that it is in the interests of justice for the term of office of the Chief Justice to be extended because this would facilitate a faster transformation of the judiciary.

The Chief Justice abides the decision of the Constitutional Court.

Mario Gaspare Oriani-Ambrosini, MP was admitted as third amicus curiae but will not file written argument or address the Court.

The President and the Minister for Justice and Constitutional Development maintain that the applicants have not satisfied the requirements for granting direct access. They insist that the President extended the term of office of the Chief Justice in terms of a law of general application which is consistent with the Constitution. They argue further that the President is not obliged to consult with anyone before making the extension. They also ask the Court to hold that the law is not inconsistent with the Constitution because, on a proper construction, it is Parliament that has in fact extended the term of office of the Chief Justice by authorising the President to request the Chief Justice to continue in office.