

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(BRAAMFONTEIN)**

Case No:CCT54/2016

NGHC 2013/3888

In the matter between:-

SOUTH AFRICAN MUNICIPAL WORKER'S UNION

Appellant

and

**THE MINISTER OF CO-OPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS**

1st Respondent

THE SPEAKER OF THE NATIONAL ASSEMBLY

2nd Respondent

THE CHAIRPERSON OF THE NCOP

3rd Respondent

THE PREMIER OF THE EASTERN CAPE

4th Respondent

THE PREMIER OF THE FREE STATE

5th Respondent

THE PREMIER OF GAUTENG

6th Respondent

THE PREMIER OF KWA – ZULU –NATAL

7th Respondent

THE PREMIER OF MPUMALANGA

8th Respondent

THE PREMIER OF THE NORTHERN CAPE

9th Respondent

THE PREMIER OF LIMPOPO

10th Respondent

THE PREMIER OF NORTH WEST

11th Respondent

THE PREMIER OF THE WESTERN CAPE

12th Respondent

**THE SOUTH AFRICAN LOCAL GOVERNMENT
ASSOCIATION**

13th Respondent

FIRST RESPONDENTS' PRACTICE NOTE

Nature of proceedings:

1. The applicant seeks:
 - 1.1. An order confirming the order made by the High Court of South Africa Gauteng Division, Pretoria in a Judgment under case No. 3558/2013 delivered on 23 February 2016 (“the judgement *a quo*”), declaring that the Local Government Municipal Systems Amendment Act 7 of 2011 (“Amendment Act”) is invalid and its entirety for lack of compliance with the procedure set out in section 76 of the Constitution.
 - 1.2. Leave to appeal to the above Honourable Court against the judgment *a quo* in respect of
 - 1.2.1. its failure to determine whether section 56 A of the Local Government Municipal Systems Act 32 of 2000 (“the Systems Act”), read together with the definition of “*political office*” in section 1 of the Act is inconsistent with the constitution and invalid.
 - 1.2.2 Its failure to award the Applicant’s costs
 - 1.3. The upholding of its appeal in respect of section 56A an order declaring that the provisions is inconsistent with the Cosntitution and invalid.

1.4. Costs in the High Court and in this Court, both in respect of the procedure followed in passing the Amendment Act, and the challenges to section 56A.

2. Issues to be argued:

The confirmation application:

2.1. The issue is whether the court a quo was correct in declaring the Amendment Act unconstitutional because it was incorrectly tagged.

2.2. First Respondent takes no issue with the judgment of the court a quo on the tagging issue. The First Respondent abides by the judgement a quo.

The section 56A challenge

2.3. The issue is whether the court a quo was correct not to rule on the section 56A in the light of the declaration that the entire legislation is unconstitutional.

2.4. The First Respondent will argue that if the entire impugned legislation is declared unconstitutional, it is unnecessary to determine whether or not section 56A offends against section 36(1), as it argued in the court a quo. In this regard, the First Respondent agrees with the approach adopted by the Court a quo in not determining the substantive issue in the light of the finding of invalidity of the entire legislation.

- 2.5. The First Respondent will argue that the Appeal in respect of the substance of the impugned provisions is premature in that the court a quo has not delivered a judgment on that issue.
- 2.6. The First Respondent will also argue that in the event that this court takes the view that it must, in the interest of time and costs, determine the substance of the impugned provisions, it will be argued that section 56A does not offend against section 36 of the Constitution in that it constitutes permissible limitation of rights.
- 2.7. The following parts of the records need not be considered, except to the extent they might be referred to in the parties submissions :
 - 2.7.1. Annexure CT2, volume 4, from pages 333-357 and pages 373-383; and
 - 2.5.2 The application to strike out, volume 5 from page 421-428 and pages 434-447.
3. The argument should not exceed 1 day.

Summary of arguments:

4. The First Respondent will argue that the Court a quo was correct in not dealing with the second issue of the constitutionality or otherwise of section 56A.

5. The First Respondent will always argue that the court *a quo* has not made a decision or judgment on section 56A, accordingly there is no judgment or order appealable.
6. If the court entertains the argument on section 56A, then the First Respondent will argue that there is no basis to declare section 56A unconstitutional as it is a reasonable and proportionate limitation of rights justifiable in terms of section 36(1) of the Constitution
7. In argument emphasis will be laid on the following authorities
 - 7.1. Tongwane and Others v Minister of Agriculture
 - 7.2. State v Makwanyane 1995 (3) SA 391 CC para 102
 - 7.3. Minister of Home Affairs v National Institute for Crime Prevention and Integration of Offenders (NICRO) 2004 5BCLR 445 CC at 36
 - 7.4. Affordable Medicines Trust and others v Minister of Health and Others (2006) 3 SA 247 (CC) p.280 para 82
 - 7.5. New National Party of South Africa v Government of the Republic of South Africa and Others 1999 (3) SA 191 (CC)t
 - 7.6. Pharmaceutical Manufacturers Association of SA and Others in re Ex parte President of the Republic of South Africa and Others 2000 vol 2 SA 674 CC

DATED AT JOHANNESBURG ON THIS THE ____ DAY OF SEPTEMBER 2016

M SIKHAKHANE SC
FJ NALANE
Sandton Chambers
Sandton