



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **South African Municipal Workers' Union v Minister of Co-operative Governance and Traditional Affairs and Others**

**CCT 54/16**

**Date of hearing: 10 November 2016**

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#### **MEDIA SUMMARY**

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*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 10 November 2016 at 10h00 the Constitutional Court will hear an application for confirmation and leave to appeal arising from an order of the High Court of South Africa, Gauteng Division, Pretoria. The order concerns the constitutionality of the Local Government: Municipal Systems Amendment Act (Amendment Act) in its entirety and the Local Government: Municipal Systems Act (Systems Act) in part.

In May 2010, the Bill preceding the Amendment Act was submitted to Parliament. It was introduced in the National Assembly and referred to the Joint Tagging Mechanism (JTM) for classification, and to the Portfolio Committee on Co-operative Governance and Traditional Affairs for consideration. The JTM included the Speaker of the National Assembly (Speaker) and the Chairperson of the National Council of Provinces (Chairperson) (respectively the second and third respondents in this matter). During the enactment process, the JTM “tagged” the Bill as an ordinary Bill not affecting the provinces.

On 2 July 2011, the Bill was enacted in terms of section 75 of the Constitution. Among other things, the Amendment Act inserted section 56A into the Act; a provision limiting some political rights of senior managers in municipalities.

The Applicant in this Court, the South African Municipal Workers' Union (SAMWU), instituted proceedings in the High Court to challenge the constitutionality of the Amendment Act and certain provisions of the Systems Act. It contended that the Amendment Act was incorrectly tagged as a section 75 Bill, rather than a section 76 Bill

(procedural challenge). SAMWU also submitted that section 56A of the Systems Act, when read together with the definition of “political office” in section 1, is inconsistent with the Constitution as it amounts to unjustifiable limitations of a number of rights, including the right to make free political choices as enshrined in section 19(1) of the Constitution (substantive challenge).

With respect to the procedural challenge, the High Court declared that the Amendment Act is unconstitutional and invalid as it fails to comply with the procedures set out in section 76 of the Constitution. The High Court found it unnecessary to decide the substantive challenge.

SAMWU comes to this Court seeking a confirmation of the High Court declaration with respect to the procedural challenge; and direct access to appeal the High Court’s failure to make a determination on the substantive challenge.

There are thirteen respondents in this matter, nine of whom have remained inactive during the history of this matter. The Minister does not oppose the confirmation of the declaration of invalidity, but argues that the substantive issue should not be determined if the confirmation application succeeds. The Speaker and Chairperson jointly seek to limit the retrospective effect of the confirmation of the declaration. The Premier of the Western Cape (Premier), the twelfth respondent, did not participate in the proceedings in the High Court and does not wish to oppose the application before this Court. The Premier seeks instead to place further evidence before the Court, and participate during oral argument on the retrospective effect of the declaration of invalidity.