



CONSTITUTIONAL COURT OF SOUTH AFRICA

President of the Republic of South Africa v Speaker of the National Assembly and Others

CCT 278/19

Date of judgment: 25 July 2025

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 25 July 2025 at 10h00 the Constitutional Court handed down a unanimous judgment authored by Madlanga ADCJ in an application for direct access brought by the applicant, the President of the Republic of South Africa, for a variation of the Court's order in *AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services* [2021] ZACC 3 (*AmaBhungane*). The matter was unopposed and decided without a hearing.

Central to this matter is the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA). RICA authorises, amongst other functions, a designated Judge to issue directions for the surveillance of individuals or interceptions of communications for purposes of law enforcement and national security.

On 4 February 2021 the Constitutional Court confirmed a declaration of invalidity made by the High Court of South Africa, Gauteng Division, Pretoria relating to certain provisions of RICA. It suspended the declaration of invalidity for a period of 36 months to afford Parliament an opportunity to cure RICA's constitutional defects. To ensure RICA's operability during the period of suspension, the Court further ordered certain interim relief.

On 6 December 2023 Parliament passed the Regulation of Interception of Communications and Provision of Communication-Related Information Amendment Bill, which was forwarded to the President for signature and promulgation. In August 2024 the President became aware that the interim remedy granted by the Constitutional Court in

AmaBhungane lapsed when the period of suspension of the declaration of invalidity expired on 3 February 2024. For a variety of reasons, the President considered the Bill for the first time only in October 2024. On advice from his legal advisors, he referred the Bill back to Parliament over concerns that it did not adequately address the constitutional deficiencies identified by this Court in *AmaBhungane*.

In the interim, the President brought an application to the Constitutional Court asking for supplementary just and equitable relief in terms of section 172(1)(b) of the Constitution. The President sought this relief because, after the expiry of the period of suspension, RICA had been rendered inoperable. Crucially, as a result of the declaration of invalidity, a designated Judge could no longer be appointed and yet directions for the surveillance of individuals or for interceptions of communications are issued by a designated Judge. The President asked that the supplementary just and equitable relief should apply pending the enactment of the Bill.

The Constitutional Court held that it would not allow RICA to continue being inoperable. It thus had to grant just and equitable relief pending the Bill's promulgation. The Court, therefore, granted the following interim relief in terms of section 172(1)(b). It authorised the Chief Justice to nominate three Judges to be appointed as designated Judges and mandated the Minister of Justice and Constitutional Development to appoint such nominees. Upon appointment of the nominees, RICA would become operable. Secondly, the Court resuscitated other interim relief granted in *AmaBhungane*. It made no order as to costs.