



CONSTITUTIONAL COURT OF SOUTH AFRICA

Socialist Agenda of Dispossessed Africans v Minister of Cooperative Governance and Traditional Affairs

CCT 279/23

Date of judgment: 20 November 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 20 November 2025, the Constitutional Court handed down judgment in confirmation proceedings concerning the constitutional validity of section 43(2)(c) of the Local Government: Municipal Structures Act 117 of 1998. The matter arose from a High Court order declaring the provision unconstitutional insofar as it requires that a tie in surplus vote calculations for membership of a municipal executive committee be resolved “by lot”—a process also known as sortition.

The applicant, the Socialist Agenda of Dispossessed Africans (SADA), is a political party that participated in the 2021 local government elections in the Fetakgomo Tubatse Local Municipality. Following the election, both SADA and the Democratic Alliance (DA) obtained two council seats each. When seats on the executive committee were allocated, their surplus vote calculations were equal. In terms of section 43(2)(c), the deadlock was broken by drawing lots; the DA obtained the disputed seat. SADA challenged the constitutionality of this tie-breaking mechanism.

The High Court held in SADA’s favour, reasoning that using a random lot disregarded the total number of valid votes cast for each party and thus infringed section 19(3)(a) (the right to vote) and section 160(8) of the Constitution (fair representation and democratic participation). It suspended the declaration of invalidity for 18 months and referred the order to this Court for confirmation.

Before the Constitutional Court, SADA repeated its argument that resolving ties by lot undermines the electorate’s will and fails to take account of the actual number of votes each party received. The Minister of Cooperative Governance did not participate in either the High Court or Constitutional Court proceedings despite multiple invitations to do so. At the Court’s request, counsel from the Pan African Bar Association (PABASA) appeared to advance arguments in defence of the statute.

In a unanimous judgment written by Majiedt J (with Mlambo DCJ, Kollapen J, Mathopo J, Mhlantla J, Musi AJ, Rogers J, Savage AJ, Theron J and Tshiqi J concurring), the Court held that the impugned provision is constitutionally valid and therefore declined to confirm the High Court’s order of invalidity.

The Court began by analysing the nature of executive committees within municipal councils. It explained that such committees possess no original legislative or executive authority; they operate solely through powers delegated by the municipal council, which retains the ultimate decision-making responsibility. Because section 19(3)(a) guarantees the right to vote only in elections for a “legislative body”, the Court held that the right is not implicated by disputes about the internal composition of a non-legislative committee.

Turning to section 160(8), the Court emphasised that the Constitution requires fair representation, not strict proportionality, in municipal committees. Drawing on its earlier decision in *Democratic Alliance v Masondo N.O.* [2002] ZACC 28; 2003 (2) SA 413 (CC), the Court reiterated that fair representation reflects the Constitution’s commitment to pluralistic and deliberative democracy and does not demand a mathematically precise mirror of electoral outcomes. Sortition, while unconventional, is a mechanism Parliament deliberately selected for resolving ties in surplus calculations for committee seats.

The Court stressed that elections to municipal councils already reflect proportional representation, and that nothing in the Constitution compels proportional representation to carry through to executive committees. The legislature chose a formulaic method for allocating executive committee seats and intentionally incorporated a randomised tie-breaker. Courts may not override such policy choices absent a clear constitutional violation. No such violation was found and the Court is bound to comply with the separation of powers principle by respecting this particular policy choice.

The Court also noted that other parts of the Act (such as the determination of tied ward-councillor elections and certain municipal office-bearer elections) also use lot-drawing, underscoring that sortition is an accepted statutory device.

As a result, the High Court’s reasoning was found to rest on a mistaken assumption that proportionality was constitutionally required at the committee level. Its invalidation of the provision could therefore not stand.

A further issue addressed in the judgment concerned the Minister’s repeated failure to participate. The Court expressed strong criticism of the Minister’s inaction, observing that a responsible Minister has a duty to assist courts when the constitutionality of legislation is challenged. The High Court’s difficulty in reaching a properly tested conclusion highlighted the prejudice caused by the Minister’s absence.

On costs, the Court held that SADA should not be penalised for bringing the constitutional challenge: under the *Biowatch* principle (*Biowatch Trust v Registrar Genetic Resources* [2009] ZACC 14), unsuccessful constitutional litigants acting against the state should not bear adverse costs orders unless the litigation is frivolous. SADA’s challenge was not frivolous and a costs order against it is thus not warranted.

The Constitutional Court did not confirm the High Court’s order declaring section 43(2)(c) unconstitutional. The provision requiring the determination of ties “by lot” therefore remains valid.