

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(CONSTITUTION HILL, BRAAMFONTEIN)**

CASE NO 115/2012

In the matter between:

**LINDIWE MAZIBUKO, LEADER OF THE
OPPOSITION IN THE NATIONAL
ASSEMBLY**

Appellant/Applicant

and

**MAXWELL VUYISILE SISULU, MP
SPEAKER OF
THE NATIONAL ASSEMBLY**

First Respondent

**DR MATHOLDE SEROFO MOTSHEKA, MP,
THE CHIEF WHIP, NATIONAL ASSEMBLY**

Second Respondent

APPLICANT'S PRACTICE NOTE

Nature of the proceedings:

1. An application for a declaration under Rule 11, read with section 167(4)(e) of the Constitution, that Parliament has failed to fulfil its constitutional obligation by failing to schedule the applicant's motion of no confidence in the President under s 102(2) of the Constitution for debate and vote in the National Assembly.

2. An application for leave to appeal directly to this Court, under Rule 19(2), against the order of the Western Cape High Court of 22 November 2012 dismissing the applicant's application for an order directing the first respondent to take the necessary steps to schedule a debate and vote on the applicant's motion of no confidence.
3. Alternatively to paragraph 2, an application to this Court for direct access for a declaration that the Rules of the National Assembly are inconsistent with the Constitution and invalid.

Issues that will be argued:

4. The importance of motions of no confidence.
5. Whether members of Parliament, including members of the opposition, have a right to have motions of no confidence scheduled for debate and vote in the National Assembly as a matter of urgency.
6. Whether the Rules of the National Assembly empower the first respondent to schedule a debate on a motion of no confidence.
7. Whether the Rules of the National Assembly are consistent with the Constitution.
8. Whether this Court has exclusive jurisdiction.
9. Whether a direct appeal and/or direct access should be allowed.
10. Costs in the High Court and in this Court.

Portions of the record that are relevant:

11. The whole of the record is relevant.

An estimation for the duration of oral argument:

12. The case can be fully argued within one (1) day.

Summary of the applicant's argument:

13. The applicant has a right to have a motion of no confidence debated and voted upon in the National Assembly as a matter of urgency.

14. This Court is empowered to intervene to the extent that the Rules of the National Assembly or the conduct of the Speaker prevent the vindication of this right.

15. National Assembly Rule 2(1) empowers the first respondent to schedule a motion of no confidence for debate in the event of a deadlock at the relevant committee of the National Assembly (the Programme Committee).

16. The High Court erred in holding that the first respondent did not have this power.

17. If this Court holds that the first respondent does not have the power to schedule a debate and vote on a motion of no confidence, the Rules of the National Assembly are not constitutionally compatible.

18. Parliament has failed to provide rules that are constitutionally compatible. This involves a determination of whether Parliament has fulfilled a constitutional obligation, in respect of which this Court has exclusive jurisdiction.
19. Alternatively, the Rules of the National Assembly are inconsistent with the Constitution and the applicant is entitled to approach this court directly for a declaration to this effect.

Authorities on which the Respondent's will place particular reliance:

20. *Oriani-Ambrosini v Sisulu, Speaker of the National Assembly 2012 (6) SA 588 (CC); 2013 (1) BCLR 14 (CC)*

ADV ANTON KATZ SC

ADV GRANT QUIXLEY

Chambers
Cape Town

19 March 2013