

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

Case No: CCT 115/2012

WC High Court Case No: 21990/2012

In the matter between:

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

Appellant/Applicant

and

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

First Respondent

**DR MATHOLE SEROFO MOTSHEKA, MP, CHIEF WHIP,
NATIONAL ASSEMBLY**

Second Respondent

SECOND RESPONDENT'S PRACTICE NOTE

The Proceedings

1. The Applicant applies directly to this Court for an order under Rule 11, declaring in terms of section 167(4)(e) of the Constitution that Parliament has failed to fulfill its constitutional obligations under section 102(2) of the Constitution, by failing to schedule a motion of no confidence in the President of the Republic of South Africa, for debate and vote in the National Assembly, within a reasonable time, as contemplated by section 237 of the Constitution.
2. The Applicant further seeks leave to appeal directly to this Court against the order of the Court *a quo* dismissing her application, which she brought on an urgent basis, for

an order directing the First Respondent to take whatever steps necessary to ensure that a motion of no-confidence in the President of the Republic of South Africa be scheduled for a debate and vote in the National Assembly on or before Thursday, 22 November 2012.

3. In the alternative to the above relief, the Applicant seeks an order granting direct access to this Court for a declaration that the Rules of the National Assembly (*“the Rules”*) are inconsistent with the Constitution and invalid to the extent that they do not protect the rights of the Applicant, as well as those of other Members of the National Assembly, to have such a motion accorded appropriate priority over other business.
4. The Applicant further seeks an order directing the First Respondent to take whatever steps necessary to ensure that the National Assembly schedules the motion of no-confidence for debate and vote as a matter of urgency, precedence and priority, and, if at all possible, on or before 7 December 2012; and an order to the extent necessary, declaring that the motion of no -confidence has not lapsed pursuant to the provisions of rule 316(1) of the Rules.

Issues to be argued

5. The issues that will be argued are the following:

5.1 Whether the above issues are moot, in light of the fact that:

- 5.1.1 The date 7 December 2012, before which date the Applicant sought to have the motion of no-confidence debated in the National Assembly, has passed.
- 5.1.2 The Applicant's own party has declined to have the motion to be debated by the National Assembly on 26 February 2012, despite it being provisionally scheduled for debate on that date.
- 5.1.3 The fact that the National Assembly Rules Committee ("the NARC") is now seized of the matter of reviewing the Rules.
- 5.2 Whether Parliament has failed to fulfill its constitutional obligations in terms of section 167(4)(e).
- 5.3 Whether the Rules are inconsistent with the Constitution to the extent that they do not provide specifically for motions of no-confidence brought in terms of section 102 of the Constitution.
- 5.4 Whether, in view of the fact that the Applicant has not exhausted the internal remedies provided for by the Rules made pursuant to section 57 of the Constitution, this application is not premature.
- 5.5 Whether, in light of the fact that the NARC is currently reviewing the Rules, interference by the Court is not premature at this stage.

Relevant portions of the record

6. The entire record is relevant to the determination of the matter.

Estimated duration of oral argument

7. It is estimated that oral argument on behalf of all three parties should not exceed one day.

Summary of Second Respondent's argument

8. The National Assembly has not failed to fulfil its constitutional obligations:
 - 8.1 It has promulgated appropriate internal rules to regulate motions of no confidence in the President.
 - 8.2 The motion of no confidence tabled by the Appellant was scheduled for debate for 26 February 2013 and could not have been scheduled earlier.
9. There is no legal authority for requiring a motion of no confidence in terms of section 102(2) of the Constitution to be scheduled and debated on an urgent basis at a time and date chosen by the sponsor of that motion.

10. Motions of no confidence in terms of section 102(2) of the Constitution are subject to the Rules and Procedures of National Assembly in terms of section 58(1) of the Constitution. Chapter 7 and 8 regulates the members' rights to propose motions. Rule 103 and 104 specifically deal with matters that are urgent and of national importance.

11. Courts should give due deference to Parliament on the management of its internal affairs or arrangements relating to the scheduling of motions. The Courts should not act as the Rules Committee or Sub-Committee on Review of the National Assembly by issuing rules that regulate the internal management of the National Assembly

MODISE KHOZA SC

THABANI MASUKU

GCOBANI NGCANGISA

Chambers

Johannesburg & Cape Town

26 March 2013