

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

WC High Court Case No: 21990/2012

Case No: CCT 115/2012

In the matter between:

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

Applicant

and

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

1st Respondent

**DR MATHOLE SEROFO MOTSHEKGA, MP,
CHIEF WHIP OF THE AFRICAN NATIONAL CONGRESS**

2nd Respondent

FIRST RESPONDENT'S SUMMARY OF ARGUMENT ITO PRACTICE

DIRECTION 5(f)

(a) Section 167(4)(e)

1. The Applicant seeks a declarator in terms of section 167(4)(e) of the Constitution. This relief is incompetent for the following reasons:

1.1 In terms of section 42(1) of the Constitution, Parliament consists of the National Assembly and National Council of Provinces ("*the NCOP*").

- 1.2 Section 57(1) of the Constitution empowers the National Assembly specifically to determine and control its own internal arrangements, proceedings and procedures, and make rules and orders concerning its business.
- 1.3 Similar, but separate, provision in respect of the NCOP is made in section 70 of the Constitution.
- 1.4 Since section 102 of the Constitution provides for motions of no-confidence in the Cabinet and the President to be moved in the National Assembly, not Parliament, this Court cannot declare in terms of section 167(4)(e) of the Constitution that Parliament had failed to fulfil its constitutional obligations under section 102(2).

(b) The power of the Speaker to schedule the motion

2. The Applicant seeks leave to appeal against the judgment of the Court *a quo*, where the Applicant sought a *mandamus* against the First Respondent personally, ordering him to "*take whatever steps necessary to ensure*" that the motion of no-confidence be scheduled for debate and a vote in the National Assembly on or before Thursday, 22 November 2012.
3. Apart from the fact that the date of 22 November 2012 has now passed, which renders the relief moot, this relief was incompetent from the outset, for the following reasons:

- 3.1 The Applicant did not even attempt to identify the steps which the First Respondent could lawfully take to "*ensure*" that the motion be scheduled for debate and a vote.
 - 3.2 It cannot be said that the First Respondent has any residual powers to schedule the motion once the Programme Committee, who is charged with the scheduling of motions by the Rules, has deadlocked.
 - 3.3 If this Court were to hold that the Speaker could have had recourse to rule 2(1), it will take cognisance of the fact that the Speaker in fact gave a ruling, albeit not invoking rule 2(1), that he would report the deadlock to the National Assembly.
4. The matter was not ripe when the Applicant launched the proceedings, for two main reasons:
 - 4.1 Despite the First Respondent's indication that he was treating the matter as urgent and taking legal advice, the Applicant launched an application without waiting for the First Respondent's response.
 - 4.2 Due to the Applicant's premature launching of the application, she incorrectly proceeded against the Speaker personally. If the National Assembly had taken a decision adverse to the Applicant, the

Applicant would have been able to proceed against it.

5. The Applicant waited too long before tabling the motion. The motion was only tabled during the penultimate week of the National Assembly's annual session.
6. Moreover, the members of the parties which the Applicant represents could have called for a vote in the Programme Committee meeting. The First Respondent indicates that the reason why the minority parties did not call for a vote was presumably because not all their members were in attendance.
7. The Applicant's party could also have approached the National Assembly itself, to decide on the scheduling and voting of the motion of no-confidence. Instead, the Applicant rushed to the Court without the National Assembly even having expressed itself on the matter.
8. In any event, the application which served before the Court *a quo* has now become moot, for the following reasons:
 - 8.1 The Applicant's motion of no-confidence lapsed at the conclusion of the annual session, and, despite the fact that the debate on the motion was preliminarily scheduled for debate on 26 February 2013, the Applicant's party declined to revive the motion.

8.2 Furthermore, the National Assembly Rules Committee (“NARC”) is in the process of amending the Rules to specially provide for the tabling of motions of no-confidence in terms of section 102 of the Constitution.

(c) The Rules

9. The Applicant asks for a declarator that the Rules are unconstitutional. This prayer is likewise incompetent, if only for a lack of sufficient particularity.
10. In any event, it is submitted that the Rules are not inconsistent with the Constitution inasmuch as motions brought in terms of section 102 of the Constitution can be scheduled by the Programme Committee, alternatively the National Assembly itself.
11. Moreover, the NARC has been attending to the drafting of a new rule aimed specifically at giving effect to section 102 of the Constitution. In accordance with the dictates of the *trias politica* doctrine, this Court will not usurp the NARC's function by prescribing a rule(s) to Parliament.

(d) Mootness

12. The Applicant calls for a *mandamus* against the First Respondent personally to “take whatever steps are necessary to ensure” that the

National Assembly schedules and votes on the motion of no-confidence "*on or before 7 December 2012*".

13. The incompetence of the relief asked against the First Respondent has been dealt with above. The First Respondent does not have the power to schedule this debate on his own authority, especially not after the Programme Committee reached a deadlock.

14. The relief sought in this prayer is, however, now also moot, for the following reasons:

14.1 Insofar as the relief is substantially centred around the insistence that the motion be scheduled on or before 7 December 2012, this is no longer possible.

14.2 The motion of no-confidence tabled by the Applicant has lapsed and her party has declined to revive it, despite it being provisionally scheduled for debate on 26 February 2013.

14.3 Since the NARC is now seized of the matter, the issue pertaining to the drafting of the rule has also become moot.

CROSS-APPEAL ON COSTS

15. The First Respondent has brought a cross-appeal against the Court *a quo*'s decision not to grant the First Respondent his costs. The Court *a quo*'s judgment was squarely based on the contentions advanced by the First Respondent regarding his lack of authority to schedule the motion.

CONCLUSION

16. It is submitted that the application should be dismissed with costs, including the costs of two counsel.

J.C. HEUNIS SC
L. SMIT
First Respondent's counsel

Chambers, Cape Town
22 March 2013