



CONSTITUTIONAL COURT OF SOUTH AFRICA

Democratic Alliance v The Speaker of the National Assembly and Others

CCT 86/15

Date of hearing: 5 November 2015

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 Thursday 5 November 2015 at 10h00 the Constitutional Court will hear a confirmation application and an appeal concerning the constitutional validity of section 11 of the Powers and Privileges and Immunities of Parliament and Provincial Legislatures Act (Act). This clause allows the Speaker or Chairperson of Parliament to direct the “security services” (the defence force, the police service and intelligence services) to remove or arrest a person creating or taking part in a disturbance within the Parliamentary precincts.

On 12 February 2015, whilst the President was delivering his State of the Nation address in Parliament, a member of the Economic Freedom Fighters (EFF) asked a question relating to money that the President was allegedly required to pay in fulfilment of findings made by the Public Protector. Members of the EFF were dissatisfied with the manner in which the first respondent, the Speaker of the National Assembly, dealt with the question and they continued to interject. The Speaker requested that these members leave the Chamber, but they did not comply. The Speaker directed police officials to remove the defiant members in terms of section 11 of the Act. When members of the applicant, the Democratic Alliance (DA), learnt that police officers had removed the EFF members, the DA challenged the constitutionality of the action and walked out of Parliament.

The DA filed an application in the Western Cape Division of the High Court, Cape Town (High Court) challenging the constitutional validity of section 11 of the Act on the ground that it was incompatible with a member of Parliament’s constitutional privilege of free speech and immunity from arrest. Furthermore, the DA contended that the provision

violates the principle of separation of powers by empowering the Speaker or Chairperson to order members of the security forces to arrest members during parliamentary proceedings.

The High Court held that the provision was constitutionally invalid to the extent that it permitted a member to be arrested for conduct that is protected by the immunity against arrest and the privilege protecting free speech. The Court did not rule on whether the provision violated the principle of separation of powers. It ordered a “notional severance” to bring the provision within constitutional bounds, subjecting it to a condition such that it would no longer permit violations of the privilege against arrest. It suspended the order of invalidity for a period of 12 months, so as to allow Parliament to remedy the defect.

Before the Constitutional Court the DA seeks confirmation of the High Court’s order. It also seeks leave to appeal against the remedy ordered by the High Court, as well as the Court’s decision not to address the separation of powers claim. The DA contends that the remedy still violates the principle of separation of powers by allowing the Speaker or Chairperson to order the removal or arrest of members of Parliament. For this reason, it submits that the most appropriate remedy would be to sever words from the provision so that only members of staff would be able to remove persons from Parliament.

The respondents seek leave to appeal against the judgment and order of the High Court. They argue that the provision does not infringe a member’s constitutional privileges, but instead prohibits conduct or speech by members which stops, or threatens to stop, parliamentary proceedings. In their view, this type of conduct and speech is not protected by the Constitution. Additionally, they argue that the provision does not offend the principle of separation of powers because the intervention by security services under the provision does not usurp Parliament’s power, but instead facilitates its proper functioning.