



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 29 September 2016  
**STATUS** Immediate

#### ***Primedia Broadcasting v Speaker [2016] ZASCA 142 (29 September 2016)***

The Supreme Court of Appeal today upheld an appeal against an order of the majority of a full court of the Western Cape Division of the High Court that limitations on the right to an open Parliament were not unconstitutional.

Democracy in South Africa is predicated on open government in which all citizens participate. The Constitution affords all South Africans the right to see and hear what happens in Parliament. Sections 59 and 72 of the Constitution provide that the business of the National Assembly and of the National Council of Provinces houses of Parliament must be conducted in an open manner and that the public and media have the right of access, subject to reasonable measures regulating that right.

Not all members of the public are able to attend sittings of Parliament. But the media is able to bring to their attention what happens in sittings by virtue of radio and television broadcasts, through newspapers and now also through social media such as Twitter. In so far as television and radio broadcasts are concerned, s 21 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (the Powers Act), provides for regulation of

the broadcast feed. It limits the right to broadcast by stating that broadcasting may be done only with the permission of Parliament and in accordance with rules determined by the Speaker or the Chairperson. Television broadcasts are made under the direction of an official who is the head of the broadcasting unit of Parliament – the Director.

Parliament has adopted a policy and rules on broadcasting. These both preclude the televising and broadcasting of disruptions in the Chamber, and require that during a sitting, where there is disorderly conduct or unparliamentary behaviour, the camera must be focused on the Speaker and the Chair. The provisions of the rules and the policy are referred to as the 'disruption provisions'.

The appellants, a broadcasting company and civil society organizations, including the South African National Editors Forum, challenged the constitutional validity of the disruption provisions. The triggers for the constitutional challenges were the events that took place in Parliament on 12 February 2015 when the President of the Republic, Mr Jacob Zuma, was scheduled to address a joint sitting of Parliament, delivering the State of the Nation Address (SONA). The appellants maintain that the respondents, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces, the Secretary to Parliament and the Minister of State Security violated the public's rights to see and hear what was said and done in Parliament on 12 February 2015 in two ways.

First, the State Security Agency, without seeking the authority of Parliament, employed a device that disrupted – jammed – telecommunication signals when the sitting began. Second, when there was a disruption of the proceedings at the start of the sitting, the parliamentary television broadcast feed was limited to showing the Speaker, Ms Baleka Mbete, and showed nothing of a scuffle that broke out between members of the Economic Freedom Fighters (EFF) and security officials as they tried to force EFF members of Parliament out of the Parliamentary chamber.

The use of the jamming device precluded Members of Parliament (MPs) and journalists from using their cell phones to inform the public, outside Parliament, what was happening at a significant national event, the SONA. When there was loud and angry protest by those in the House about the jamming, the Speaker asked the Secretary to investigate what was happening and the signal was restored. The explanation for the jamming was that it was inadvertent. The appellants sought an urgent order in the Western Cape Division of the High Court that the jamming of the signal was unlawful and unconstitutional. The majority of the full court that heard the application refused that relief.

The second violation complained of by the appellants is that members of the public were deprived of the right to see and hear what happened in Parliament when members of the EFF asked the President when he would pay back the money that had been spent on his private homestead in KwaZulu-Natal, Nkandla. The Speaker refused to allow the questions. The EFF MPs refused to back down. The Speaker ordered them to leave the Chamber. They refused. She then called in a large number of men whom she referred to as 'the parliamentary protection services', and a violent altercation ensued. The EFF MPs were forcibly removed from the Chamber.

When the members of the protection services entered the Chamber, the broadcasting feed was focused on the Speaker and the Chairperson of the Council. People outside the Chamber could thus not see the interaction between the EFF MPs and the security staff through official means. Journalists who took videos or photographs of the scuffle in fact did broadcast the activity in Parliament, but against the provisions of s 21 of the Powers Act, and in violation of the disruption provisions. The public accordingly had to rely on poor and unauthorized cell phone broadcasts or second-hand information on what had happened. The appellants had thus also applied for an order that the respondents should ensure the openness of Parliament and that the manner in which the live broadcast had been made was unlawful. The majority of the full court refused that relief as well.

On appeal, the appellants accepted that the right to an open Parliament was not unlimited but argued that the restrictions imposed by the disruption clauses were not reasonable. The SCA held, in favour of the appellants, that the restrictions were unreasonable. The limitation of the television broadcast was futile, as journalists informed the public about the scuffles in any event; it resulted in inaccurate reporting when the public has a right to accurate reports; the limitation deprived the public of the right to know who causes, and controls, incidents of disorder; and not broadcasting scenes of disorder does encourage other such incidents. The SCA held also that the disruption provisions were not clear and had to be interpreted by the Director as and when incidents of disruption occurred. The court thus held that these provisions were unconstitutional and unlawful.

Although the Minister claimed that the signal disruption at the start of the SONA was the result of a mistake made by the operator of the telecommunications signal jamming device (and the full court considered that the issue had become moot), the appellants contended that its use, without the permission of Parliament, was in any event unlawful in terms of s 4 of the Powers Act. The SCA held that the use of the jamming device, in the particular circumstances of the case, had contravened s 4 and was thus unlawful.

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