REPORTABLE
Case No: 297/98

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

In the matter between:

THE SPEAKER OF THE NATIONAL ASSEMBLY APPELLANT

and

PATRICIA DE LILLE MP FIRST RESPONDENT

THE PAN AFRICANIST CONGRESS OF AZANIA SECOND RESPONDENT

COURT: MAHOMED CJ, VAN HEERDEN DCJ, NIENABER, OLIVIER JJA, and FARLAM AJA

DATE OF HEARING: 24-25 MAY 1999

DATE OF DELIVERY: 26 AUGUST 1999

SUMMARY: A Member of Parliament (MP) made a number of unsubstantiated allegations against other named members in the National Assembly. On being reprimanded by the Speaker, she unconditionally withdrew her remarks. Despite this, the Assembly sought to punish her by excluding her from its deliberations for 15 days. The Constitution does not grant the Assembly authority to suspend the MP in these circumstances for that period.

JUDGMENT

. . . MAHOMED CJ

MAHOMED CJ

1 The first respondent ("respondent") in this appeal is a member of the National Assembly ("the Assembly"). During an interpellation debate in the Assembly on 22 October 1997, the respondent stated that the second respondent had information pertaining to twelve members of the "other side of the House" (the ANC) who had been accused of having been "spies for the apartheid regime". She said it was necessary to know whether these accusations were true. She called on the Government to "tell the public at large who the agents are who received blood money to betray the genuine struggle of the African people". She said it was no longer the prerogative of the President to withhold information about who betrayed the soul of the nation. These remarks provoked various interventions and the respondent was challenged to give the names of those who were alleged to be "spies". She eventually reacted to this challenge by mentioning the names of eight persons including some who were not members of the Assembly.

2 The Speaker of the Assembly, who is the appellant, ruled that it was unparliamentary for the respondent to use the word "spies" in referring to members of the Assembly and in doing so to name such members of the Assembly. The respondent was asked to withdraw this part of her statement in the Assembly.

3 The respondent initially agreed to withdraw her remarks conditionally, because she wanted an opportunity to consult the relevant rules of the Assembly. The appellant insisted that the respondent had to decide whether she was withdrawing the offending remarks or not. She was not entitled to a conditional withdrawal. The respondent thereupon withdrew her statement and was thanked by the appellant.

4 The matter was again raised on 27 October 1997 by the appellant who had in the meanwhile examined the unrevised Hansard of the interpellation debate on 22 October. She referred to those parts of the statement previously made by the respondent which referred to "agents . . . who received blood money to betray the genuine struggle of the African people" and to "people who betrayed the soul of the nation". The respondent was asked also to withdraw these parts because they were unsubstantiated allegations against members which reflected on their integrity. The respondent unconditionally withdrew the offending remarks.

5 The appellant thereupon said that the "House has accepted the practice that members should not be attacked by name in the House without prior notification." She added that she wanted "to encourage members to follow this practice in future."

6 Later on 27 October 1997 a member of the ANC in the House proposed a motion to appoint an "ad hoc committee to report to the House . . . on the conduct of Mrs P de Lille, in making serious allegations without substantiation against members of the House on 22 October 1997, and to recommend what, if any, action the House should take in the light of its report." The motion was adopted by the Assembly by a majority of votes. Only members of the ANC supported the motion.

7 The ad hoc committee authorised by this resolution was duly appointed. It consisted of eight members of the ANC and seven members from the opposition. It was at all times chaired by a member of the ANC. It convened on 5 November 1997 and continued its sittings on 6 and 25 November 1997.

8 The ad hoc committee adopted a report to the Assembly which included recommending that the respondent:

a. Be directed to apologize to the Assembly by means of a letter addressed to the appellant;

b. Be suspended for fifteen parliamentary working days with effect from the next sitting day.

9 In substance these recommendations were adopted by the Assembly on 25 November 1997. In addition it resolved that the apology which the respondent was directed to make extended also to the individual members of the Assembly she had previously named in the interpellation debate. In a letter dated 15 December 1997 the Secretary of the Assembly wrote to the respondent formally informing her of these decisions and stating that the "period of suspension would . . . run from 2 to 20 February 1998."

10 The respondent was aggrieved by these decisions and launched a formal application in the Cape High Court impugning the relevant resolutions of the ad hoc committee and the Assembly which led to her suspension, on the grounds that the majority of the members of the ad hoc committee and the Assembly were biased against her, that they were mala fide and that she did not receive a fair hearing before the impugned resolutions were adopted.

11 A full bench of the Cape High Court consisting of King DJP and Hlope J upheld this attack and granted an order declaring void the relevant resolutions of the Assembly on 25 November 1997 impacting on the respondent.[1]

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[1] *De Lille and another v Speaker of the National Assembly* 1998 (3) SA 430 (C).

12 Mr Gauntlett SC who appeared for the appellant (together with Mr Heunis SC and Mr Ngalwana) submitted that the evidence on affidavit which was relied on by the court a quo, did not justify the conclusion that the majority of the ad hoc committee or the Assembly were biased against the respondent or that they were mala fide or that they failed to accord to the respondent a fair hearing before supporting the impugned resolutions. This is strenuously disputed by Mr Trengove SC who appeared for the respondent (with Mr Chaskalson and Mr Tredoux). In the view I take of this appeal, I shall assume without deciding that Mr Gauntlett is correct in his submission.

13 That assumption is not sufficient, however, to resolve the appeal in favour of the appellant. Even if the impugned resolutions were adopted bona fide and even if the respondent did receive a fair hearing preceding such adoption, the essential enquiry which needs to be made is whether or not in the circumstances disclosed by the record the Assembly had any lawful authority to take any steps to suspend the respondent from Parliament.

14 This enquiry must crucially rest on the Constitution of the Republic of South Africa. It is Supreme - not Parliament. It is the ultimate source of all lawful authority in the country. No Parliament, however bona fide or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution. Section 2 of the Constitution expressly provides that law or conduct inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any

decree, order or action of any official or body, which is not properly authorised by the Constitution is entitled to the protection of the Courts. No Parliament, no official and no institution is immune from Judicial scrutiny in such circumstances.[2]

15 It is therefore necessary to examine the provisions of the Constitution to determine whether there is any Constitutional authority which entitled the Assembly to suspend the respondent in the circumstances relied on by the appellant.

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[2] *Executive Council, Western Cape Legislative v President of the RSA* 1995 (4) SA 877 (CC). at para's 61-62, *Ex parte Speaker of the National Assembly: In re Dispute Concerning the Constitutionality of Certain Provisions of the National Education Policy Bill 83 of 1995* 1996 (3) SA 289 (CC) (1996 (4) BCLR 518) at para 22.

16 The first section of the Constitution upon which reliance is placed on behalf of the appellant is section 57.[3] This section provides that the National Assembly "may determine and control its internal arrangements, proceedings and procedures". There can be no doubt that this

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[3] Section 57 reads as follows:

"(1) The National Assembly may -

(a) determine and control its internal arrangements, proceedings and procedures; and

(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

(2) The rules and orders of the National Assembly must provide for -

(a) the establishment, composition, powers, functions, procedures and duration of its committees;

(b) the participation in the proceedings of the Assembly and its committees of all minority political parties represented in the Assembly, in a manner consistent with democracy;

(c) financial and administrative assistance to each party represented in the Assembly in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively; and

(d) the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition."

authority is wide enough to enable the Assembly to maintain internal order and discipline in its proceedings by means which it considers appropriate for this purpose. This would, for example, include the power to exclude from the Assembly for temporary periods any member who is disrupting or obstructing its proceedings or impairing unreasonably its ability to conduct its business in an orderly or regular manner acceptable in a democratic society.[4] Without some such internal mechanism of control and discipline, the Assembly would be impotent to maintain effective discipline and order during debates.

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[4] For this reason the Standing Rules for the Assembly give powers to the Speaker to suspend a member of the Assembly in such circumstances for a maximum period of five Parliamentary working days on the first occasion (See Rules 85 - 88 of the Standing Rules). No such power is given to the Assembly in terms of the relevant rules.

17 But it does not follow from this that the Assembly necessarily had the Constitutional authority to suspend the respondent from its proceedings in the circumstances which it resolved to do. It is clear that the respondent was not suspended because her behaviour was obstructing or disrupting or unreasonably impeding the management of orderly business within the Assembly, but as some kind of punishment for making a speech in the Assembly some days earlier which did not obstruct or disrupt the proceedings in the Assembly at the time, but was nevertheless considered objectionable and unjustified by others including the majority of members of the ad hoc committee and the Assembly. As was explained by the Privy Council in *Kielley v Carson*[5] the former kind of suspension is a necessary protective measure, the latter not. The question therefore that needs to be determined is not whether the Assembly or the appellant had lawful authority to suspend the respondent from the Assembly as an orderly measure to protect proceedings of the Assembly from obstruction or disruption, but whether or not it had the authority to do so as a punishment or disciplinary measure for making a speech which was not in any way obstructive or disruptive of proceedings in the Assembly, but which was nevertheless open to justifiable objection. That question cannot properly be answered by interpreting the ambit of section 57(1)(a) of the Constitution in isolation, but by reading it together with other relevant provisions including section 58.[6]

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5 [1842] 13 ER 225 (PC).

6 The full text of section 58(1) and (2) reads as follows:

"(1) Cabinet members and members of the National Assembly -

(a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and

(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -

(i) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or

(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees.

(2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation."

18 Section 58(1)(a) provides that Cabinet members and members of the National Assembly have freedom of speech in the Assembly and its committees, subject to its rules and orders. Section 58(1)(b)(i) goes on to provide that such members are not liable to civil or criminal proceedings, arrest or imprisonment or damages "for anything they have said in, produced before or submitted to the Assembly or any of its committees". Section 58(2) states that "[o]ther privileges and immunities of the National Assembly . . . may be prescribed by national legislation."

19 The main argument of Mr Gauntlett on behalf of the appellant was based on section 58(2). He contended that if section 57(1)(a) is read with section 58(2) it ultimately provides constitutional authority for the suspension of the respondent in the circumstances I have referred to. This submission is based on a series of interrelated, complex and sometimes even perplexing propositions. The first proposition is that section 36 of the Powers and Privileges of Parliament Act No 91 of 1963 ("the PPP Act") (which preserves in general terms the "privileges, immunities and powers" which Parliament enjoyed at the date of the enactment of Act 32 of 1961)[7] constitutes "national legislation" which "prescribes other privileges and immunities of the National Assembly" within the meaning of section 58(2) of the Constitution. The second proposition is that the effect of section 36 of the PPP Act in so preserving the "privileges,

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[7] Section 36 of the PPP Act provides as follows:

> "Save as is otherwise expressly provided by this Act, Parliament, a member and an officer of Parliament, respectively, shall have all such privileges, immunities and powers as at the time of the promulgation of the Constitution were applicable in the case of the House of Assembly referred to in the Republic of South Africa Constitution Act, 1961 (Act 32 of 1961), and any member or officer thereof and also such privileges, immunities and powers as are from time to time conferred by any law of the Republic."

immunities and powers" which Parliament enjoyed at the date of the enactment of 1961, was also to preserve the provisions of section 36 of Act 19 of 1911 which provided *inter alia* that save as otherwise expressed in that Act, the members of the House of Assembly would enjoy the same privileges enjoyed by the House of Commons of the Parliament of the United Kingdom or the members thereof. The third proposition is that one of the privileges or powers, which the House of Commons in the United Kingdom enjoys (although rarely exercised) is the power to suspend a member of the House for contempt and other breaches of privilege. This power, it is argued, is part of the law and custom of Parliament in the United Kingdom.[8] The fourth proposition is that the end result of the previous three propositions is to render lawful the respondent's suspension, because it would be lawful in terms of the parliamentary law and custom of the United Kingdom which is incorporated through an interpretation of a successive web of South African legislation over a period of more than eighty years.

20 Central to the edifice which the appellant seeks to erect on the strength of these propositions in defence of the respondent's suspension is one basic premise. It is this: By

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8 Halsbury's Laws of England (4th ed Vol 34 para 1009); O Hood Phillips: Constitutional and Administrative Law (7th Edition p 131); Coke: Fourth Institutes of the Laws of England (1797) p 50.

incorporating a reference to other laws which in turn incorporate further laws which incorporate the Parliamentary law and custom of the United Kingdom which arguably allows for the suspension of members of Parliament, section 36 of the PPP Act is "prescribing" "other privileges and immunities of the National Assembly" and its members within the meaning of these expressions in section 58(2) of the Constitution. In my view this basic premise is unsound in law. Section 58(1) expressly guarantees freedom of speech in the Assembly (subject to its rules and orders). It is a crucial guarantee. The threat that a member of the Assembly may be suspended for something said in the assembly inhibits freedom of expression in the Assembly and must therefore adversely impact on that guarantee. Section 58(2) must not be interpreted in the manner contended by Mr Gauntlett so as to detract from that guarantee. What section 58(2) does is to authorise national legislation which will itself clearly and specifically articulate the "privileges and the immunities" of the National Assembly which have the effect of impacting on the specific guarantee of free speech for members in the Assembly. It does not contemplate a tortuous process of discovery of some obscure rule in English Parliamentary law and custom justifying the suspension of a member of Parliament which is not identified within section 36 itself, but is to be inferred from a South African statute in 1911 which is inferentially incorporated in another statute in 1961 which is itself incorporated by reference in section 36 of the PPP Act. Section 36, in my view, therefore, does not constitute "national legislation" which "prescribes" any "privileges and immunities" of the National Assembly (within the meaning of section 58(2) of the Constitution), which justifies the invasion of the guarantee of free speech in section 58(1) through the mechanism of the punitive suspension of a member of the Assembly.

21 Mr Gauntlett relied heavily on the case of *Poovalingam v Rajbansi*[9] in support of his

[9] 1992 (1) SA 283 (A).

interpretation of section 58(2). He drew our attention to the review of Parliamentary privilege in South Africa contained in the judgment of Corbett CJ[10] in that matter. In my view *Poovalingam's* case does not assist the argument of Mr Gauntlett in the present appeal. The dispute in *Poovalingam's* case was whether a certain letter delivered by one member of a Parliament to other members and which was said to be defamatory of a particular member was protected by the guarantee of free speech in Parliament contained in sections 2 and 8 of the PPP Act. Corbett CJ held that it was not. In the course of doing so he analysed the history of the privilege conferred on members of Parliament, through its origins in English law and concluded that there was a "close bond between our law and English law on the subject of Parliamentary privilege."[11] The Court was not confronted with or required to deal with the issue as to whether or not an express Constitutional guarantee of free speech for members of a Parliamentary Assembly such as that protected by section 58(1) of the present Constitution could be restricted through "other privileges and immunities" inherited from English Parliamentary custom in a general way without being specifically prescribed by national legislation of the nature contemplated by section 58(2).

22 Moreover, the constitutional regime which operated when *Poovalingam's* case was decided was the Republic of South Africa Constitution Act 110 of 1983 which had no provisions corresponding with important provisions of the present (1996) Constitution relevant to the present debate. Not only is the right to freedom of speech in the Assembly expressly

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10 Especially at pp 290-91.

11 At 291F-G.

constitutionalised in section 58(1)(a) (subject to its rules and orders), but the "rules and orders" which the Assembly makes to control its "internal arrangements, proceedings and procedures," must, in terms of section 57(1)(b), have "due regard to representative and participatory democracy." These provisions are also materially different from the comparable provisions of the interim Constitution contained in Act 200 of 1993.[12]

23 Properly interpreted, the provisions of section 58(2) of the Constitution therefore do not support the approach contended for by Mr Gauntlett. Section 58(2) does not itself "prescribe" any other "privilege or immunity", to limit the right of free speech in the Assembly protected by section 58(1). National legislation is necessary to achieve that result.

24 The argument advanced on behalf of the appellant based on section 58(2) of the Constitution and Section 36 of the PPP Act is countered by Mr Trengove by another suggested obstruction. It is this: Section 36 of the PPP Act is preceded by the phrase "[s]ave as is otherwise expressly provided by this Act". This means that the "privileges, immunities and powers" of the National Assembly at the time of the promulgation of Act 32 of 1961 which the section seeks to preserve, only apply to the extent to which the PPP Act does not provide otherwise.

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[12] See sections 55 and 58 of Act 200 of 1993.

25 It is contended that Section 10 of the PPP Act, does however, provide very elaborate mechanisms to discipline and punish members of the Assembly. Section 10(3) refers to 13 different forms of contempt which Parliament can punish. They include the kind of contempt which the respondent in this matter is said to have committed. Section 10 also provides for punishment in the form of a fine and detention where such fine has not been paid. Mr Trengove argued that in effect the PPP Act codifies what the different forms of contempt are and how they are to be punished. No provision is made, however, for suspension as a form of punishment for a member who is guilty of contempt of the kind attributed to the respondent.[13]

[13] Section 10(1) of the PPP Act read with section 10(2) and section 32.

26 Mr Gauntlett, contended, however, that section 10 is not exhaustive. He argued that it is not inconsistent with the retention of the power of suspension in appropriate cases, if this is permitted by the legislation incorporating English Parliamentary law and custom in the manner I have previously described. Mr Trengove argued that the detailed structure of the PPP Act, does not permit of such an interpretation but even if it did, the Act is also at least reasonably capable of the interpretation that it is indeed exhaustive in respect of the punishments which are competent for contempt. It was contended that in that event the latter construction must be preferred because it would be more consistent with the spirit and purpose of the Constitution and its anxiety to protect freedom of speech and more particularly the right of members representing voters, to express themselves freely and without fear on matters of public interest. It was pointed out that section 39(2) of the Constitution expressly directs that "when interpreting any legislation . . . every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."[14]

27 Although the alternative submissions of Mr Trengove referred to in paragraphs 24,

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[14] See *Du Plessis and Others v De Klerk and Another* 1996 (3) SA 850 (CC) (1996 (5) BCLR 658) at paras 60-66, 86, 141; *Holomisa v Argus Newspapers Ltd* 1996 (2) SA 588 (W) at 596C-598E; *Director: Mineral Development Gauteng Region and another v Save the Vaal Environment and others* unreported decision of the SCA, 133/98 (12 March 1999).

25, and 26 are certainly arguable, I find it unnecessary to decide on the correctness thereof, because of the conclusions I have come to in respect of his other submissions dealt with in this judgment.

28 If section 58(2) provides no constitutional authority for the suspension of the respondent from the National Assembly, is there any other provision in the Constitution which does? In the alternative to his main argument, Mr Gauntlett contended that such authority is to be inferred from section 58(1)(a) which limits the right to freedom of speech in the Assembly by making it subject to its rules and orders. It was conceded that the rules and orders of the Assembly do not themselves make any provision for the suspension of the members by the Assembly, but it was contended that this effect is achieved through Rule 77(A)(1) of the Standing Rules of the Assembly which makes freedom of speech and debate in the House itself "subject to the restriction placed on such freedom in terms of the Constitution, any other law or these Rules."[15] It is argued again that this incorporates section 36 of the PPP Act, which through a series of subsequent incorporations of other laws, ultimately incorporates English Parliamentary law and custom, which in certain instances allows the House of Commons to suspend its members. The reasons which I have set out in rejecting a similar argument in dealing with the submission that section 58(2) provides constitutional authority for the suspension of the respondent, are of equal

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[15] Rule 77(A)(1) of the current Standing Rules of the Assembly provides that:
"In accordance with section 55(2) of the [interim] Constitution [now section 58(1) of the Constitution] there shall be freedom of speech and debate in or before this House and any committee thereof, or any joint committee of Parliament, subject only to the restrictions placed on such freedom in terms of or under the Constitution, any other law or these Rules."

application to the appellant's case in this respect based on section 58(1).

29 There is therefore nothing in the "rules and orders" of the Assembly, which qualifies in any respect relevant to the appeal, the right to freedom of speech in the Assembly which section 58(1) guarantees. More directly, there is nothing which provides any constitutional authority for the Assembly, to punish any member of the Assembly, for making any speech, through an order suspending such member from the proceedings of the Assembly. The right of free speech in the Assembly protected by section 58(1) is a fundamental right crucial to representative government in a democratic society. Its tenor and spirit must conform to all other provisions of the Constitution relevant to the conduct of proceedings in Parliament.

30 In the result, the appellant has failed to persuade me that the National Assembly had any constitutional authority to suspend the respondent from the National Assembly in the circumstances disclosed by the evidence adduced before the High Court.

31 The respondent would therefore be entitled to an order declaring her purported suspension to be void, unless there is some legal basis for excluding the jurisdiction of the Court to afford such relief to her.

32 In the context under consideration there was considerable debate by counsel in the heads of argument, with regard to the implications and the correctness of various dicta in the Canadian case of *New Brunswick Broadcasting Co v Nova Scotia*.[16] The issue in that case was whether the exclusion of media representatives from proceedings in the Nova Scotia House of Assembly

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[16] (1993) 13 CRR (2nd) 1 (SC).

because they were seeking to televise the proceedings violated the right to freedom of expression articulated in section 2(b) of the Canadian Charter. McLachlin J held in that case that the Legislative Assembly concerned had an inherent constitutional right to exclude strangers from its chambers in order to protect itself against the disruptions of its business. Our attention was drawn to the following dicta by the learned Judge:[17]

> "Having concluded that the Assembly had the Constitutional right to do what it did, it follows that the *Charter* cannot cut down that right, on the principle that one part of the Constitution cannot abrogate another part of the Constitution."

[17] At 21.

The approach of McLachlin J in this case was not fully shared by the other Judges[18] and is the subject of considerable controversy in Canada.[19] It is, however, unnecessary in the present appeal to pursue this controversy. Nothing in any of the judgments in the case of *New Brunswick Broadcasting Co v Nova Scotia* supports the proposition that a purported exercise of power, not properly authorised by the Constitution, is immune from judicial scrutiny and convention. The issue in that case was whether the exercise of such a power violated the Canadian Charter of fundamental rights, and if it did so, whether it was subject to "Charter review". Those questions might or might not have risen in the present appeal if it was necessary to decide that the appellant or the National Assembly had violated the Bill of Rights in Chapter 2 of the Constitution, by failing to afford to the respondent a fair bona fide hearing. I have found it unnecessary to decide that issue. The only relevant issue is whether or not the suspension of the respondent by the National Assembly was constitutionally authorised. I have held that it was not.

33 The appellant also adduced a certificate in terms of section 5 of the PPP Act[20] in the court a quo ostensibly as some kind of obstacle to the jurisdiction of the Court to afford to the respondent the relief she sought. Counsel for the appellant, before us, however expressly

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18 Cory J at p 58; Lamer CJ at p 42.

19 See Peter W Hogg: Constitutional Law of Canada, loose-leaf edition Vol. 2 pp 34-9 to 34-10.

20 Section 5 provides as follows:

> "At any stage of any civil or criminal proceedings instituted for or on account or in respect of any matter of privilege, upon production to the court or judge by the defendant or accused, of a certificate by the Speaker or, in his absence or other incapacity, by the Secretary, stating that the matter in question is one which concerns the privilege of Parliament, that court or judge shall immediately stay such proceedings, which shall thereupon be deemed to be finally determined."

abandoned any reliance on this certificate.

34 The court a quo was therefore correct in holding that the decision of the National Assembly on 25 November 1997 to suspend the respondent was void. The order made by the Court however to uphold prayers 2.1, 2.3 and 2.5 of the notice of motion needs re-examination. Prayer 2.1 sought to declare void the whole of the resolution passed by the National Assembly on 25 November 1997. That resolution included two parts: the first part directed the respondent to apologise, and the second part resolved to suspend her from Parliament. The attack of the respondent was confined to the second part. The period of suspension has in any event expired. Counsel were agreed that if the submissions on behalf of the appellant made by Mr Gauntlett failed, the proper course would be to make an order declaring that the National Assembly was not entitled in law to make an order purporting to suspend the respondent from the National Assembly.

Costs

35 Notwithstanding the fact that the whole of the order of the court a quo cannot be sustained on appeal, the respondent has achieved substantial success on appeal. There is no reason why the appellant should ordinarily not be directed to pay the costs of the respondent. The respondent engaged three counsel on appeal. They were Mr Trengove, Mr Chaskalson and Mr Tredoux. Mr Trengove and Mr Chaskalson, however, appeared pro-amico. Mr Trengove for the respondent, therefore asked for an order dismissing the appeal, and an order of costs consequent upon the employment of Mr Tredoux and in respect of only the disbursements of Mr Trengove and Mr Chaskalson.

Order

36 It is ordered that:

(1) The order made by the court a quo is set aside, subject to paragraph 2.

(2) The order of costs made by the court a quo is upheld.

(3) It is declared that that part of the resolution of the National Assembly adopted on the 25 November 1997 which purports to suspend Mrs Patricia De Lille is void and is set aside.

(4) The appellant is directed to pay the costs of the respondent on appeal. Such costs shall include:

(a) The costs attendant upon the employment of Mr Tredoux;

(b) Only the disbursements incurred by or on behalf of Mr Trengove and Mr Chaskalson, (including the reasonable costs of accommodation and travel).

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CHIEF JUSTICE

CONCUR:

VAN HEERDEN DCJ

NIENABER JA

OLIVIER JA

FARLAM AJA