

REPORT TO NEGOTIATING COUNCIL ON OUTCOME OF THE LEGAL ACTION INSTITUTED BY THE KWAZULU GOVERNMENT AGAINST TWO CHAIRPERSONS, MESSRS MJ MAHLANGU AND PJ GORDHAN

The Negotiating Council will recall that I was mandated to co-ordinate the efforts of all those who were charged with the defence of the court action instituted by the KwaZulu Government against two Chairpersons, namely MJ Mahlangu and PJ Gordhan. The matter was heard by the full bench of the Transvaal Provincial Division last week. Eloff J.P. presided and he was assisted by Van der Walt J. and Plewman J. The applicant was represented by Advocates Piet van der Byl S.C., Louis Visser S.C. and Hendrik Jakobs. The respondents were represented by Advocates Wim Trengove S.C., Pius Langa and Gilbert Marcus.

The proceedings commenced in the Pretoria Supreme Court at 10h00 on the 9th of September. At the outset Counsel for the applicant outlined the facts pertaining to this matter. After he had given the factual outline the judges requested him to address them on four legal issues. They indicated quite clearly that they had fundamental problems with applicant's case. After Counsel began addressing the court on these issues, and some fifteen minutes into his argument, he called for an adjournment. The court adjourned at 10h40 and the proceedings resumed at 11h00. It was clear at this stage that the applicant was having difficulty in satisfying the court that it had jurisdiction to entertain the application. It is apposite to mention at this point that the applicant had applied to court for a declarator the effect of which, if granted, would have been the nullification of the definition of 'Sufficient Consensus' as it appears in the Standing Rules. Secondly, the applicant applied for the review and setting aside of four decisions taken on the basis of Sufficient Consensus. It must also be noted that the respondents' case was founded on three affidavits deposed to by MJ Mahlangu, PJ Gordhan and Z Titus.

The proceedings recommenced at 11h00. After Advocate van der Byl had presented further argument on behalf of the applicant Counsel for the respondents then rose to address the court. He gave an impressive display and it was clear at that point that the respondents' case was watertight. The court adjourned at 11h45 to enable the judges to consider the preliminary question whether, in terms of the law, the Supreme Court had jurisdiction to entertain the application.

Judgement was delivered at 14h30. In a well-reasoned, well-researched, comprehensive and thought-provoking judgement the judges dealt with the following issues:

- a) The history of the negotiating process;
- b) the legal nature of the process and the legal nexus between the process itself and the various participants in the process;
- c) the legal authorities relating to the jurisdiction of the Supreme Court in matters of this nature;

- d) the role of the courts in matters which are essentially political in nature; and
- e) the difficulties which applicant would have encountered as a result of non-joinder of other Negotiating Council members if the court had jurisdiction at all to hear the matter.

The judges ruled against the applicant. During the course of our preparations for the case it transpired that there was no legal precedent anywhere in the world for a case of this nature. This judgement therefore forms an important part of the history of South African jurisprudence. It no doubt constitutes a landmark ruling and many lawyers will for many years hereafter refer to it as the locus classicus case on the Supreme Court's jurisdiction on matters which are political in nature. The respondents were overjoyed when the judges ruled that the Supreme Court had no jurisdiction to hear the matter. They however reacted in a mature and objective manner to the ruling. In a statement released after the hearing, they stated:

"The Supreme Court today confirmed that the appropriate place for the KwaZulu Government and the Inkatha Freedom Party is at the World Trade Centre. The Court is not the appropriate forum to resolve disputes of an essentially political nature.

We believe that having explored this legal avenue as it is its right, the KwaZulu Government allies should now return to the Negotiating Process which provides ample opportunity for discussing and arriving at agreements which can serve to reassure all interests.

Indeed this Court's judgement, in our view, should be morally binding on the KwaZulu Government and the Inkatha Freedom Party and requires that the interests of the whole country and all its peoples should be the foremost concern of all political actors.

Negotiations remain the only way to achieve a peaceful and democratic South Africa which we strive to establish. The Inkatha Freedom Party and the KwaZulu Government have a vital contribution to make to the process.

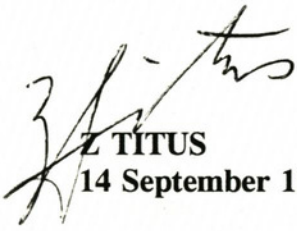
We believe that the Supreme Court ruling today paves the way for their return to the negotiating process at the World Trade Centre."

Finally, I wish to congratulate the respondents' lawyers, including the instructing attorneys Cheadle, Thompson and Haysom Inc, for the excellent manner in which they handled this matter. They did a marvellous job. The affidavits they prepared demonstrate quite clearly that a lot of preparation was put into the case. The heads of argument were comprehensive and well researched. All the affidavits, the written heads of argument and the written judgement will be forwarded to the administration in due course for filing. Copies of the judgement will be made available to you all. The applicant has not yet informed the respondents' lawyers whether they intend appealing against the ruling. It was however

Reported on TV1 this morning that the possibility of an appeal is under consideration by the applicants' legal advisors.

It is hoped that the IFP and the KwaZulu Government will rejoin the negotiations. The judges specifically reminded all concerned that the proper place for settling political differences is the Negotiating Council and not the courts. We are now moving inexorably ahead towards the installation of a democratic order in South Africa and I trust that, instead of embarking on actions leading to the making of legal history, all South Africans will now concentrate their efforts solely towards bringing to fruition the single epoch-making event which the majority of us are looking to, namely the holding of democratic elections in April next year.

Thank you



Z TITUS
14 September 1993