



## CONSTITUTIONAL COURT OF SOUTH AFRICA

*Speaker of the National Assembly and Others v New Nation Movement NPC and Others*

CCT 110/19

**Date of Judgment: 20 April 2023**

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### MEDIA SUMMARY

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*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, 20 April 2023 at 10h00, the Constitutional Court handed down judgment in an urgent application for an extension of a further suspension in respect of a declaration of invalidity issued by the Court in *New Nation Movement NPC v President of the Republic of South Africa* (New Nation Movement II (first order)).

On 11 June 2020, the Court in *New Nation Movement II*, declared the Electoral Act 73 of 1998 unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties. It ordered that the declaration of constitutional invalidity be suspended for 24 months until 10 June 2022 to afford Parliament an opportunity to remedy the defect.

On 10 June 2022, and arising from an application to the Court by the applicants, an order was issued extending the suspension for a further period of six months, that is, from 10 June 2022 to 10 December 2022 (second order). Four days before the expiry of the further suspension period granted by the Court in the second order, the applicants, the Speaker of the National Assembly (Speaker), the Chairperson: National Council of Provinces, and the Minister of Home Affairs, jointly approached the Court on an urgent basis seeking a further extension of the suspension period until 28 February 2023. In the alternative, they sought an interim extension whilst the Court considered whether the further extension sought should be granted. On 9 December 2022, the Court granted an interim order to this effect.

The application was opposed by New Nation Movement NPC (New Nation Movement) and Ms Chantal Dawn Revell (Ms Revell), respectively the first and second respondents in the application. New Nation Movement also filed a counter-application, which Ms Revell supported. In support of the application was the sixth respondent, the Electoral Commission (Commission). The Commission supported the application as it found it competent, but on condition that the extension did not run beyond 28 February 2023. The Commission also filed a notice to abide. Two amici curiae, the Council for the

Advancement of the South African Constitution and the Organisation Against Tax Abuse, also abided by the Court's decision. As in the first extension application, the tussle here was about whether the urgent application for an extension should be granted, regard being had to the principles relating to urgent applications, the time the application was brought, and the implications which the terms of the order in *New Nation Movement II* have for our democracy and the rule of law.

The applicants contended that, until late November 2022, Parliament was on track to pass the Bill before the scheduled deadline of 10 December 2022. However, when the National Council of Provinces (NCOP) passed the Bill, together with proposed amendments, on 29 November 2022 and referred it back to the National Assembly, it became evident that the proposed amendments were substantive and required further public participation, as they arose during the NCOP process and had therefore not been subjected to direct public discussion. They submitted that this was the reason for seeking the extension shortly before the expiry of the extension period previously granted. The applicants submitted that the amendments proposed by the NCOP include a proposed broader electoral reform which goes beyond merely including independent candidates in the 2024 elections.

The applicants submitted that the Bill is not intended to determine the position for all future elections. Rather, it is intended to act as a stop-gap measure and put a system in place for the 2024 elections in which independent candidates will be given an opportunity to run. The applicants further pointed out that if an extension was not granted, the declaration of invalidity would come into effect and there would be no binding electoral system for the National Assembly and Provincial Legislatures. Further, if the deadline lapsed, the applicants argued that the Court would not have the authority to suspend the declaration of invalidity.

The first respondent argued that a grant of the extension would necessitate adequate time to be afforded in order to challenge the constitutional validity of the Electoral Act, as amended (in proceedings from the High Court to the Court). It argued further that the applicants had failed to establish why the pending amendments justify their failure to meet their obligations under the *New Nation Movement II* judgment.

The second respondent argued that (a) the relief sought by the applicants was not sustained by the facts set out in their affidavits; (b) the time period for the extension sought seemed irrational and should not be accepted by the Court as credible; and (c) the amendments cited by the applicants are not required to give effect to her right to stand for public office. She submitted further that the applicants had dragged their feet and simply failed to meet the deadlines set by the Court and their own deadlines.

The Commission found the extension application competent as long as the extension did not go beyond 28 February 2023. It objected only to a longer extension on the basis that it would be prejudicial to it, taking into account the adjustments and preparations it has to make, which are inclusive of redesigning its systems to accommodate the new electoral system, in order to run free and fair elections in 2024.

In a unanimous judgment penned by Maya DCJ, the Court found that despite the last minute launch of the application, in the public interest and to avoid Parliament's otherwise inexorable failure to meet the deadline of the second order, the Court had to decide the matter on an urgent basis. The Court noted that the power to extend the period of suspension of a declaration of invalidity is to be exercised sparingly. Further, the Court held that the matter clearly transcends the interests of the parties, and implicates the interests of the general public and our democracy. Therefore, these factors warranted the grant of the extension as a just and equitable remedy and it was in the interests of justice to make an order towards that end.

In the circumstances, the Court extended the suspension period from 10 June 2022 to 28 February 2023. On 20 January 2023, the Court issued an order granting the extension sought and on 20 April 2023, the reasons for the order were issued.