



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister for Environmental Affairs and Another v Aquarius Platinum (SA) (Pty) Ltd and Others

CCT 102/15

Date of hearing: 17 November 2015

Date of judgment: 23 February 2016

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.

Today the Constitutional Court handed down judgment in a matter concerning the validity of the decision of the President of the Republic to publish an Act of Parliament which he had assented to and signed. The High Court of South Africa, Gauteng Division, Pretoria (High Court) declared that the President's decision was irrational and set it aside. Its order was submitted to this Court for confirmation as required by the Constitution. The Constitution confers the right of appeal against this kind of order on any person or organ of state with sufficient interest. Pursuant to this, the Minister for Environmental Affairs (Minister) and her Department appealed the High Court's order.

Aquarius Platinum (SA) (Pty) Ltd (Aquarius) had instituted the application in the High Court, challenging the President's decision to publish the National Environmental Laws Amendment Act, at a time when regulations for

implementing it were not in place. The President had published the Act on 2 June 2014. A provision in the same Act stated that it will come into operation three months from the date of publication.

Indeed, the Act came into operation on 2 September 2014. By then, the Minister of Environmental Affairs who was required to make regulations in preparation for implementing the Act had not done so. This meant that some parts of the Act could not come into operation until the regulations were put in place.

In the High Court, Aquarius sought to set aside the publication which paved the way for the coming into force of the Act. It argued in the High Court that the President's decision to publish the Act before the regulations were made was irrational. The High Court accepted this argument and declared that the President's publication was irrational and set it aside.

On confirmation, the Constitutional Court differed from the High Court as to whether that decision was irrational. In a unanimous judgement prepared by Jafta J, the Court held that the provision which empowered the President to publish, did not require the President to ascertain whether the relevant regulations were already made before publication. The Court reasoned that in the present circumstances publication of the Act could precede the making of the regulations because the Act came into effect three months from the date of publication.

The Constitutional Court pointed out that the Act afforded the Minister three months to make the necessary regulations. But for unexplained reasons, the Minister failed to do so. The court found that this failure rendered the Act unworkable. The Court harshly criticised the Minister's conduct but having found that the President's decision was not irrational upheld the appeal and declined to confirm the High Court's order of invalidity