

SOUTH AFRICA / JUDGMENT

Primedia Broadcasting, a Division of Primedia (Pty) Ltd and Others v Speaker of the National Assembly and Others (2749/2015) [2015] ZAWCHC 24 (10 March 2015)

[2015] ZAWCHC 24

COURT

Western Cape High Court, Cape Town

BEFORE

Baartman, Rogers, Dolamo

CASE / FILE NUMBER

2749/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
(WESTERN CAPE DIVISION,
CAPE TOWN)

Case Number: 2749/2015

DATE: 10 MARCH 2015

In the matter between: PRIMEDIA BROADCASTING, a division of
PRIMEDIA (PTY) LTD.....First
Applicant
SOUTH AFRICAN NATIONAL
EDITORS'FORUM.....Second
Applicant
RIGHT2KNOW
CAMPAIGN.....Third
Applicant
OPEN DEMOCRACY ADVICE
CENTRE.....Fourth
Applicant
MEDIA 24
LTD.....Fifth
Applicant
And
SPEAKER OF THE NATIONAL
ASSEMBLY.....First
Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL

OF PROVINCESSecond
Respondent
SECRETARY OF
PARLIAMENT.....Third
Respondent
MINISTER OF STATE
SECURITY.....Fourth
Respondent

JUDGMENT

DELIVERED 10 MARCH 2015

THE COURT

- [1] This is an application for interim relief, Part A, against the first to third respondents, pending final relief which is claimed against all four respondents (Part B). In this judgment we deal with Part A and the relief sought to the extent necessary.

THE RELIEF SOUGHT

- [2] In this application, the applicants seek, in their amended notice of motion, the following relief against the first to third respondents (Part A) (we omit the relief concerning the so-called signal jamming issue, which has fallen away at the interim stage):

“1. Dispensing with the rules, time limits, forms and procedures provided for in the Uniform Rules of Court and granting leave for this application to be heard as a matter of urgency.

2. Pending the outcome of Part B of the Application, in respect of all open sittings of the National Assembly or the National Council of Provinces, joint sitting of Parliament or open meetings of their committees:..

2.2 The First to Third Respondents are directed to ensure that the audio and visual feeds of such sittings and meetings are not interrupted and that during occurrences of “grave disturbances” or “unparliamentary behaviour”, a wide angle shot of the chamber, including audio, will be broadcast.’

- [3] In a later application, Part B, the applicants will seek the following declaratory relief in respect of the policy:

“...1.2 The manner in which the audio and visual feeds of the State of the Nation Address on 12 February 2015 were produced and broadcast by the first to third respondents was unconstitutional and unlawful.

1.3 The Policy on Filming and Broadcasting of Parliament is invalid to the extent it requires that audio and visual feed provided by Parliament does not show ‘grave disturbances’ or ‘unparliamentary behaviour’ that takes place during Parliamentary proceedings.”

as well as the following mandatory order:

“2. In respect of all open sittings of the National Assembly or the National Council of Provinces, joint sittings of Parliament or open meetings of the committees:

...

2.2 The First to Third Respondents are directed to ensure that the audio and visual feeds of such sittings and meetings are not interrupted and that during occurrences of “grave disturbances” or “unparliamentary behaviour”, a wide angle shot of the chamber, including audio, will be broadcast.”

BACKGROUND

[4] In August 2009, Parliament adopted the Broadcasting Policy (the policy) through which it seeks to “regulate all filming within the precinct of Parliament and provide guidelines on public broadcasting of proceedings of Parliament and related matters, including the use of photography and bright camera lights.”

[5] The provisions of clause 8.3.3.2 of the policy are the subject of this litigation – they provide as follows:

“8.3.3.2 Disorder on the floor of the House:

a) Televising may continue during continued incidents of grave disorder or unparliamentary behaviour for as long as the sitting continues, but only subject to the following:

I. On occasions of grave disorder, the director must focus on the occupant of the Chair for as long as proceedings continue, or until order has been restored; and

II. In cases of unparliamentary behaviour, the director must focus on the occupant of the Chair. Occasional wide-angle shots of the chamber are acceptable.”

[6] On 21 August 2014, the effect of the policy in respect of disorder in the House first manifested itself. On that date, during presidential question time, a member of the Economic Freedom Front (the EFF) persisted in asking the president when he intended to repay some of the money spent on his private residence, Nkandla. Although the Speaker disallowed the question, the EFF member persisted. The Speaker suspended the sitting at which point members of the riot police entered the Chamber and removed several members of the EFF. The removal was not captured on the official parliamentary feed.

[7] During the debate on the Grand Inga Power Project, on 14 November 2014, the effect of the policy was confirmed. On that day, the official live video broadcast of the proceedings was shut down while members of the South African Police Services removed members of parliament, apparently for “unparliamentary” behaviour.

- [8] On 27 January 2015, representatives of Parliament and representatives of the broader media interest met “to discuss concerns regarding the live feed broadcast.” (record 29) Parliamentary representatives confirmed “as encapsulated in the Broadcasting Policy at clause 8.3.3”, that “on occasions of “grave disorder” and “unparliamentary behaviour”, the policy was that the camera focus would be on the occupant of the presiding officer’s chair, or in the case of “unparliamentary behaviour”, the presiding officer’s chair or wide angle shot.”
- [9] On 30 January 2015, media representatives, through their attorney, recorded their concerns in a letter in which they requested “...that the feed not be cut off, that it was essential that a complete picture of what was happening in Parliament be shown, including disturbances, and that the Broadcasting Policy be urgently amended accordingly, before the President’s address on the State of the Nation.” (record 29)
- [10] The State of the Nation address was scheduled for 12 February 2015; on that day, Parliament responded to the 30 January 2015 request indicating “... [Parliament] cannot operate outside its own policy....”
- [11] The State of the Nation address on 12 February 2015, a joint sitting of the houses of parliament, was presided over by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces. Mr Godrich Gardee, a member of parliament and a representative of the EFF, interrupted the president’s address by raising a question of privilege. The Speaker sought to continue the scheduled proceedings while members of the EFF sought to pursue their questioning of the president. The Speaker requested the relevant members either to allow the proceedings to continue or to leave. When they refused, the Speaker “called upon the Sergeant at Arms and parliamentary security personnel to ‘assist’ the representatives of the EFF to leave the Chamber.” EFF members were forcibly removed.
- [12] During the removal, apart from a glimpse of security personnel entering the Chamber, the camera focused on the Speaker and the Chairperson and remained so focused until the EFF members had been removed from the Chamber – a period of approximately 5 minutes. During that time, the attention of those in the Chamber, including that of the Speaker and the Chairperson, was focused on the altercation between the EFF members and the security personnel. Members of the press and the public recorded the altercation on their cellular telephones.
- [13] The debate on the State of the Nation Address was scheduled for 17 to 19 February 2015. On 13 February 2015, fearing a similar implementation of the policy, the first applicant sought an undertaking from the respondents “...that they would not prevent full access to the debate on the State of the Nation address by either allowing signal jamming to take place, and would ensure that live feed accurately reflected the material events taking place in Parliament.” (record 35) The respondents were

requested to respond to the letter by 16 February 2015, at 10h00. The respondents failed to respond by the deadline; the applicants,

therefore, launched this application later that same day. The applicants no longer seek relief in respect of signal jamming in Part A (though it remains relevant to Part B); we therefore do not deal with the allegations pertaining to it in this judgment.

Urgency

[14] The policy has been operative since August 2009. The applicants first experienced the impact of the “disturbance clause” in August 2014, yet only met with the respondents in January 2015, and thereafter recorded their concerns and demands in correspondence. The applicants launched this application on 16 February 2015, with the aim of ensuring, “that all South Africans will be able to follow the upcoming debate on the President’s State of the Nation Address from 17 to 19 February 2015 (and all other parliamentary sessions until finalisation of Part B).”

[15] The application was only heard on 6 March 2015, well after the debate scheduled for 17 to 19 February

2015. At the hearing, the applicants relied on the reference to “...all other parliamentary sessions until finalisation of Part B” for

their submission that interim relief was still appropriate. The application is now directed at 11 March 2015, being the date on which the president is scheduled to answer parliamentary questions – an event which might quite possibly give rise to further disruption. The applicants anticipate a situation that could result in another cut in the live feed.

Requirements for interim relief

[16] The requirements for an interim interdict are well known:

- (a) A prima facie right though open to some doubt;
- (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- (c) That the balance of convenience favours the granting of an interim interdict;
- (d) The absence of another adequate remedy.

DISCUSSION

[17] This application can be disposed of with reference to requirements (b) and (c). Below, we deal only with them. The applicants relied on the provisions of sections 59(1)(b) and 72(1)(b) of the Constitution as authority for the proposition that Parliament is obliged to conduct its proceedings in an open and transparent manner. The applicants acknowledged Parliament’s right to “regulate public access, including access to the media,” although the applicants stressed that such measures should be reasonable. It is in issue whether the measures currently in place in respect of “unparliamentary behaviour” and “grave disturbances” are reasonable.

[18] The respondents, however, submitted that they are compliant with their constitutional duty in that they have reasonable measures in place to balance the public's right to access to its proceedings with the obligation to preserve the dignity of Parliament.

[19] It is common cause that on 12 February 2015, the public had access to the proceedings in Parliament both through audio-visual feed and through members of the media and public being present in the Chamber. Although the feed was restricted to a view of the Speaker and Chairperson for approximately 5 minutes because of the "grave disturbance", public access was still possible via the presence of the media and general public present in the Chamber for the period of shut down. We accept that members of the public are interested in those incidents but we also accept that Parliament may be entitled to regulate public access to them. The interim relief sought by the applicants seeks to compel Parliament to abandon, in part, the policy that has been in place for

5 years. Mr S Budlender, however, who appeared for the applicants, stressed that the applicants sought only a wide angle shot of the disturbances and not a close up. Even in that measured form, the relief sought does not seek to maintain the status quo; instead, it seeks to introduce a new regime.

[20] In our view, given the limited restriction of the public's access to parliamentary proceedings (5 minutes on 12 February 2015), the 5 year period during which the measures have been operative and the imminent expedited hearing in respect of Part B in April 2015, the balance of convenience militates against granting an interim interdict that will introduce a new regime as distinct from preserving a status quo. (Cf LAWSA Vol 11 2nd Ed para 401; National Gambling Board v Premier, KwaZulu-Natal, & Others

[2001] ZACC 8; 2002 (2) SA 715 (CC) para 49.)

[21] In addition, in these proceedings the constitutionality of the relevant provisions of the policy – that is their reasonableness or otherwise – has not been fully ventilated. Both parties have expressed the need to file supplementary affidavits prior to the Part B hearing.

[22] Even though we accept that in the present climate occurrences of "unparliamentary behaviour" or "grave disturbances" are a possibility, we are nevertheless persuaded that, given the period for which the restrictions have already been in operation and the fact that they will continue to apply only for a relatively short period pending the determination of the Part B relief, the applicants have not shown irreparable harm in these proceedings justifying intervention on an urgent interim basis. The applicants have been able, and will continue to be able, to report on proceedings in Parliament through traditional reporting methods, even during those relatively brief periods (if they recur) in which, because of "grave disturbance", the visual feed does not display the disruption.

[23] The respondents in turn have alleged that to "compel Parliament to run its proceedings under court order would undermine the principle of separation of powers." In our view, an order of court directed at compliance with the provisions of the Constitution would not

undermine the principle of separation of powers. At this stage of the proceedings, however, it would be premature to pronounce on the constitutionality of the relevant provisions. We are disinclined, therefore, in the absence of irreparable harm and where the balance of convenience does not favour the applicants, to grant interim relief that would in part suspend the policy.

CONCLUSION

- [24] The applicants could have approached this court sooner; nevertheless, we are persuaded that the matter warrants an expedited hearing, being sufficiently urgent and involving constitutional issues of national importance.
- [25] In the circumstances of the matter, interim relief is not justified. However, since important constitutional issues are to be determined in Part B, it is appropriate to order that each party pay its own costs. (See *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC))
- [26] The timetable and hearing date for the Part B relief, as set out in the order which follows, is one to which all the parties (including the fourth respondent, who was not represented at the hearing of the Part A relief) have agreed, regardless of the outcome of the Part A relief. For the avoidance of doubt, the expedited hearing of the Part B relief in accordance with the order below covers all the relief sought in Part B, including the relief relating to the so-called signal jamming issue.
- [27] We make the following order:
- (a) The application for interim relief in terms of Part A is dismissed.
 - (b) Each party is directed to bear its own costs in respect of the said application for interim relief.
 - (c) The application for the relief claimed in Part B is postponed for hearing on 20 April 2015.
 - (i) The applicants are directed to file supplementary founding affidavits, if any, on or before 18 March 2015.
 - (ii) The respondents are directed to file further supplementary answering affidavits, if any, on or before 27 March 2015.
 - (iii) The applicants are directed to file supplementary replying affidavits, if any, by 2 April 2015.
 - (iv) Heads of argument must be delivered as follows: the applicants by 7 April 2015 and the respondents by 14 April 2015.

Baartman J

Rogers J

Dolamo J

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