

## Constitutional Court clarifies appeals process

A Constitutional Court decision has helped clarify the position regarding the appeals process for cases from the Competition Appeal Court.



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"Since the advent of the Constitution Seventeenth Amendment Act of 2012, there has been much debate about whether the Supreme Court of Appeal still has jurisdiction to hear appeals from the Competition Appeal Court (CAC)," Xolani Nyali, associate at Bowman Gilfillan Africa Group commented.

"This decision by our nation's highest court, in Democratic Alliance (DA) v African National Congress (ANC) indicates which way it is likely to rule in relation to this debate. Notably, the SCA, in Competition Commission v Computicket, already found that it has no jurisdiction to hear appeals from the CAC on matters that fall within the CAC's exclusive jurisdiction in terms of the Competition Act. However, the Competition Commission has indicated its intention to appeal the SCA's decision in Computicket to the Constitutional Court. The Constitutional Court's decision in DA v ANC may well be a precursor to the court's finding in the Computicket case.

"A definitive finding by the Constitutional Court in Computicket in support of its decision in DA v ANC would be a welcome development as it would ensure that competition law cases are expeditiously attended to by specialist tribunals and a uniform jurisprudence is developed, except to the extent that an appeal may still be taken to the Constitutional Court. The reduction in the number of forums for appeals is a positive development both from an expediency and a cost perspective," Nyali said.

### Correct interpretation

In DA v ANC and Another, handed down on 19 January 2015, the Constitutional Court clarified the position relation to the correct interpretation of section 168(3) of the Constitution pursuant to the Constitution Seventeenth Amendment Act of 2012.

Section 168(3) of the Constitution provides that "The Supreme Court of Appeal may decide appeals in any matter arising from the High Court of South Africa or a court of a status similar to the High Court of South Africa, except in respect of labour or competition matters to such extent as may be determined by an Act of Parliament."

This section seeks to limit the scope of the Supreme Court of Appeal's jurisdiction, particularly in relation to appeals from specialist courts which have the status of a High Court in terms of their governing legislation.

"In DA v ANC, the specialist court affected was the Electoral Court and the question before the Constitutional Court was whether an appeal from a decision of the Electoral Court lay to the Supreme Court of Appeal or the Constitutional Court. Put differently, the Constitutional Court had to determine whether the Supreme Court of Appeal could hear an appeal from the Electoral Court or whether all appeals from the Electoral Court could be heard by the Constitutional Court only," Nyali explained.

## **DA's argument**

The DA argued that the phrase "to such extent as may be determined by an Act of Parliament" in section 168(3) of the Constitution qualified the phrase "the High Court of South Africa or a court of a status similar to the High Court of South Africa" and, as such, that because there was no dedicated Act in respect of the Electoral Court, an appeal from a decision of the Electoral Court could only be heard by the Constitutional Court.

The Constitutional Court disagreed. In its opinion, the phrase "to such extent as may be determined by an Act of Parliament" qualifies the words "except in respect of labour or competition matters" and not "the High Court of South Africa or a court of a status similar to that of the High Court". The result of such a construction of section 168(3) is that appeals from the Electoral Court to the Supreme Court of Appeal are competent.

This is relevant from a competition law perspective because, since the advent of the Constitution Seventeenth Amendment Act of 2012, there has been much debate about whether the Supreme Court of Appeal still has jurisdiction to hear appeals from the Competition Appeal Court.

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