

COUNCILLORS' Individual liability

*Cape High Court, judgment date 11 June 2008,
Case No 7136/2008*

On 11 June 2008, the Cape High Court handed down a judgment that set an important precedent about councillors' individual liability for taking or supporting illegal decisions.

At the heart of the matter was the composition of the council of the West Coast District Municipality. Floor-crossing had resulted in changes to the council of Saldanha Bay, one of the local municipalities in the district. As a result, the composition and political structures of the district council were also set to change. However, the Speaker of the West Coast District Council initially refused to convene the meeting at which the district council was to recompose its political structures.

The Speaker had to be compelled by the High Court to convene the meeting as required in terms of the Municipal Structures Act. The Court ordered the Speaker to pay personally for the costs of this application. However, when the meeting eventually took place, there was a dispute as to who were the legitimate representatives of the Saldanha Bay Local Municipality. At the meeting, the Speaker of the district council made a ruling on the composition of the delegation. The ruling was politically expedient and contrary to the Municipal Structures Act. It was, in the words of the Court, "misguided and ill-advised". Nevertheless, the meeting continued.

The opposition councillors saw their opportunity to gain the majority thwarted by an illegal ruling on the part of the Speaker, supported by a majority of the councillors. They had no option but to approach a court. Once in court, the Speaker and the councillors who had supported him conceded that they had been wrong and agreed to pay the costs of the court case. The dispute eventually turned on whether they had to pay the full costs. The Court ruled that it saw no reason why the councillors who had been thwarted by the illegal ruling should bear any of the costs. It ruled that the Speaker and the councillors who had supported the ruling should pay all the costs.

Comment

This judgment is a telling reminder to councillors not to participate in or support illegal decisions, particularly when they have been advised against such decisions.

None of the offending councillors raised their immunity in the council as a defence, so the Court did not have to deal with that argument. The Constitutional Court has made it clear that immunity could possibly apply to decisions that appear to be unlawful.

In this case, however, the offence was deliberate and wilful and taken against advice. In other words, even if they had raised the defence of immunity, it would probably not have been successful. A councillor's immunity is not a licence to take or support illegal decisions deliberately.

key points

- The Speaker made a ruling that was both politically expedient and contrary to the Municipal Structures Act.
- The illegal ruling was supported by a majority of the councillors.
- The court ruled that the Speaker and the councillors who had supported the ruling should pay all the costs.
- A councillor's immunity is not a licence to take or support illegal decisions deliberately.

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