IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]

CORAM: LE GRANGE, CLOETE et BOQWANA, JJJ

[REPORTABLE]

Case number: 2792/2015

In the matter between:

DEMOCRATIC ALLIANCE	Applicant
and	
THE SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Second Respondent
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent

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Judgment delivered 12 May 2015

LE GRANGE, J

Introduction:

[1] This application arises out of the events that took place during the joint sitting of the Houses of Parliament, being the National Assembly ("NA") and National Council Of Provinces ("NCOP"), on 12 February 2015 when the State President

delivered his State of the Nation address. The Speaker of the NA ("the Speaker"), along with the Chairperson of the NCOP ("the Chairperson"), invoked s 11 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ("the Act") and called upon staff of Parliament and the security forces (as referred to in s 199 of the Constitution, be it the police, army and or intelligence services), to forcefully remove members of the Economic Freedom Front ("EFF") from the joint sitting as a result of the disturbances that were caused.

[2] The Applicant, the Democratic Alliance, being a registered political party ("the DA") and the main opposition party in Parliament, is aggrieved that the Speaker and Chairperson used security forces to remove legitimate parliamentary members from a sitting of Parliament, and is now challenging the constitutionality and meaning of s11 of the Act. The relevant section allows the Speaker and or the Chairperson to order the staff of Parliament or the security services as envisaged by s 199 of the Constitution to arrest and remove any person who creates or joins a disturbance during a sitting of Parliament or a House or a Committee.

The Background:

[3] The factual circumstances underpinning the decision by the Speaker, with the Chairperson, to invoke s 11 are not in dispute. It is common cause that shortly after the State President commenced with the delivery of his State of the Nation speech,

one of the EFF members rose to ask a question on the issue of monies the State President is allegedly required to repay in terms of a finding made by the Public Protector. The members of the EFF were not satisfied with the manner in which the Speaker dealt with the questions asked by them. Some EFF members continued to rise on a point of privilege or a point of order. The Speaker repeatedly requested the EFF members to take their seats. After some EFF members continued with interjections, the Speaker requested certain of the EFF members to leave the Chamber. This was not well received by the EFF members and ultimately s 11 was invoked.

[4] After the removal of the EFF members and some order returned to the Chamber, the DA's leader in Parliament rose on a point of clarification. He enquired from the Speaker whether Police officials had been called upon to remove the EFF members from the Chamber. Further discussion took place between the DA's Chief Whip, its Parliamentary Leader, the Speaker and the Chairperson. The Applicant's members were adamant that it was unconstitutional and un-parliamentary to call upon the security services to eject legitimate parliamentary members from the Chamber and regarded it as a serious breach of the separation of powers as enshrined in our Constitution. The Speaker and the Chairperson had a different view. The DA Members thereafter decided to walk out of the joint sitting of Parliament.

[5] At this juncture it is perhaps convenient to emphasize what this case is not about. This case is not about whether the Speaker, with the Chairperson, were justified in invoking s 11 of the Act as a measure to protect the orderliness of proceedings at the State of the Nation Address. At the heart of the Applicant's complaint is the contention that the provisions of s 11, properly interpreted, can only be applicable to non - members of Parliament. The Applicant is of the firm view that to construe s 11 differently will render it constitutionally objectionable and invalid for the following reasons. Firstly, members of parliament may not be arrested for what they say in Parliament. Secondly, Parliament may not pass legislation infringing a member's privilege of free speech as guaranteed in the Constitution. Lastly, to allow the executive to use force to arrest members of Parliament on the floor of the House of Parliament, whilst it is in sitting, is a serious threat to the independence of Parliament and the preservation of the separation of powers.

[6] The DA is therefore seeking a declaratory order in the following terms: declaring s 11 constitutionally invalid and reading in the words, "except for members"; alternatively, declaring s 11 constitutionally invalid and deleting the words, "arrest" and "security services"; in the second alternative, declaring s 11 constitutionally invalid and granting an order of notional severance in order to prevent its application to any exercise of the parliamentary privilege of freedom of speech; and as a third alternative, declaring that as a matter of interpretation, s 11 is not applicable to the exercise of the parliamentary privilege.

[7] The Respondents did not file answering affidavits. In terms of Rule 6(5)(d)(iii) of the Uniform Rules of this Court, the Respondents raised a question of law. According to the Respondents the provisions of s 11 properly construed indeed apply to a member of Parliament who creates or takes part in any disturbance in the precincts of Parliament (as defined in the Act) and as a result the section is not constitutionally offensive.

[8] The issue for consideration before this Court is therefore entirely interpretative in nature. It raises a question of law the enquiry of which in my view primarily rests on a consideration of the Constitution.

[9] Messrs. S P Rosenberg SC, assisted by H J De Waal and M J Bishop, appeared for the Applicant. Messrs. JJ Gauntlett SC, assisted by A M Breitenbach SC and Ms K Pillay, appeared for the Respondents.

The legal and constitutional frame work:

[10] In terms of the Constitution (s 43 and s 44) the legislative authority of the national sphere of Government is vested in Parliament, which consists of the NA and the NCOP. The joint sittings of these Chambers are ordinarily governed by the Joint Rules of Parliament and are presided over by either the Speaker of the NA or the Chairperson of the NCOP.

[11] The Constitution (s 57(1) and s 70(1)) affords the NA and the NCOP a general power to *'determine and control its internal arrangements, proceedings and procedures'* and to *'make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement'.*

[12] S 58(1)(a) of the Constitution further affords Cabinet Members and Members of the NA a right to freedom of speech in the NA and its committees, subject only to its Rules and orders. Section 58(1)(b) goes on to provide that such Members are not liable to civil or criminal proceedings, arrest or imprisonment or damages *'for anything they have said in, produced before or submitted to the Assembly or any of its committees'.* The Constitution (s 58(2)) further states that, *'[o]ther privileges and immunities of the National Assembly, and members of the Assembly may be prescribed by national legislation'* (The same privileges and powers are also afforded to the NCOP. See s 71 of the Constitution).

[13] It is now accepted in our law that s 57(1) of the Constitution permits Parliament to make rules that temporarily exclude disruptive members from the sittings of Parliament. In National Assembly v De Lille and Another 1999 (4) SA 863 (SCA) at 869 D, the Supreme Court of Appeal held that:

"There can be no doubt that this authority is wide enough to enable the Assembly to maintain internal order and discipline in its proceedings by means which it considers appropriate for this purpose. This would, for example, include the power to exclude from the Assembly for temporary periods any member who is disrupting or obstructing its proceedings or impairing unreasonably its ability to conduct its business in an orderly or regular manner acceptable in a democratic society. Without some such internal mechanism of control and discipline, the Assembly would be impotent to maintain effective discipline and order during debates"

[14] The Act whose provision is under scrutiny came into operation on 7 June 2004, and thus after the decision in De Lille. The preamble to the Act records that Parliament considered it "essential to provide for such further privileges and immunities in order to protect the authority, independence and dignity of the legislatures and their members and to enable them to carry out their constitutional functions". The provisions of s 11 of the Act under consideration read as follows:

"11 Persons creating disturbance

A person who creates or takes part in any disturbance in the precincts while Parliament or a House or Committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson or a person designated by the Speaker or Chairperson, by a staff member or a member of the security forces."

[15] The main edifice of Mr. Rosenberg's argument is essentially constructed on two pillars. The first comprises the challenge that the provisions of s 11 cannot survive Constitutional scrutiny if properly read in context with the other provisions of the Act and in keeping with the Constitution, which provides that Cabinet Members, Deputy Ministers, Members of the NA and Members of the NCOP are not liable to civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the NA and NCOP or any of its committees. Reference was also made to the drafting history of the Act to illustrate that s11 is only applicable to non-members as an early draft version had the word 'a member' included. On this basis, it was argued that it is necessary to read down s 11 of the Act to exclude Members of Parliament. The second pillar comprises the challenge that the provisions of s 11 violate the fundamental principle of the separation of powers as enshrined in the Constitution as a whole. The argument advanced on behalf of the DA is that to allow the Speaker or the Chairperson the power to call upon the police and or army to arrest and remove members of Parliament from the House and to allow the Executive branch of government to enter the heart of the Legislative domain, is a serious and fundamental breach of the Constitution, entirely inconsistent with the basic notion of the separation of powers and as such s 11 should be struck down.

[16] The nub of Mr. Gauntlett's argument in defence of the Respondents is that if the provisions of s 11 are read in the context of the Act as a whole and on its plain

meaning the reference to 'a person' must include a member. It was further argued that to find otherwise would be inconsistent with the plain wording of the Act; would subvert the purpose of the Act, which includes the protection of the authority, independence and dignity of the legislature and the enabling of them to carry out their constitutional functions, and would undermine and impede the important constitutionally prescribed role of Parliament as the national legislative authority. It was also contended on behalf of the Respondents that the drafting history of the Act does not support the views of the DA. Moreover, the provisions of s 11 do not threaten or infringe the functional independence of Parliament, nor does the section result in a usurpation of power. According to Mr. Gauntlett, the intervention of the security services in circumstances where members conduct themselves in a disruptive manner rather facilitates the proper functioning of Parliament as opposed to impeding it.

[17] There was also a complaint by Mr. Gauntlett that the DA impermissibly sought to expand its constitutional attack in its Heads of Argument by referring to further sections of the Constitution that were not initially mentioned in the DA's Founding Affidavit. This complaint can be dealt with up-front. It is correct that in the Heads of Argument ss 201, 207 and 209(2) of the Constitution were for the first time relied upon in order to expand the DA's challenge to the constitutional validity of s 11. In my view the crucial question is whether the references to other constitutional provisions in the Heads of Argument of the DA introduce a new cause of action. In

this regard see South African Police Service v Solidarity obo Bernard 2014 (6) SA 123 (CC).

[18] The substratum of the DA's case is principally centered on the contention that s 11 is contrary to the provisions of s 58 and s 71 of the Constitution, which guarantee freedom of speech in the NA and NCOP (subject to its Rules and orders) and that it violates the separation of powers doctrine.

[19] In the present instance, as previously stated, the attack by the DA against s 11 essentially raises an interpretative question, based on undisputed facts, which enquiry primarily rests on the Constitution. It is therefore necessary to consider the legislative framework of the relevant Act whose provision is under attack in its entirety as well as the Constitution as a whole. On a conspectus of all the papers filed of record, the references to the further sections in the Constitution by the DA do not raise a new cause of action. In fact, they only augment an already existing challenge. Moreover, the reliance on ss 201, 207 and 209(2) of the Constitution, which essentially relate to the political responsibility of the defence force, the police and the intelligence services has been covered in the original application. I did not get the impression that the Respondents' complaint is that, had the DA expressly referred to ss 201, 207 and 209(2) in the founding affidavit, they would have conducted their case differently. The Respondents in my view will suffer no prejudice if these sections of the Constitution are taken into account as part of the overall

interpretative enquiry to be conducted by this Court, and, as a result, the DA's reliance on such sections is allowed.

Principles of Interpretation:

[20] It is now well established in our law that the Constitution requires judicial officers to read legislation, where possible, in ways which give effect to its fundamental values. In this regard, in the matter of Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smith NO 2001(1) SA 545 CC, it was held that the Courts are under a duty, when the constitutionality of legislation is in issue, to examine the objects and purport of an Act and to read the provisions of the legislation, so far as possible, in conformity with the Constitution. On the other hand the Legislature is under a duty to pass legislation that is reasonably clear and precise, enabling citizens and officials to understand what is expected from them. It is often required by Courts to strike a balance to resolve this tension when considering the constitutionality of legislation. Therefore it is imperative, where a legislative provision is reasonably capable of a meaning that places it within constitutional bounds, that it should be preserved. Only if this is not possible should resort be had to the remedy of reading in or notional severance. See 558 G – 560 A.

[21] In Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA), a decision by the Supreme Court of Appeal on interpretation of legislation

or documents, the present state of the law was expressed as follows (at 603 F – 604 C):

> *"Interpretation is the process of attributing meaning to words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation;..."*

Discussion:

[22] Applying these stated principles and approach to the provisions of s 11, the question now is whether the reference to 'a person' is reasonably capable of including 'a member' and, if so, whether such meaning is congruent with section 58 (1) and 71(1) of the Constitution and the doctrine of the separation of powers.

[23] The point of departure is to have regard to the Act in its entirety. In this instance the preamble to the Act clearly demonstrates the intention to provide to Parliament and its members *'such further privileges and immunities in order to protect the authority, independence and dignity of the legislatures and their members to enable them to carry out their constitutional functions.'*

[24] On a plain reading of the text a number of sections in the Act make reference to a 'member' and 'a person' interchangeably. Some of the sections in the Act indeed proceed from the premise that a 'member' is to be construed to fall within the definition of a 'person'. In this regard section 13 provides as follows:

> *"13.* ***Conduct constituting contempt.*** *- A member is guilty of contempt of Parliament if the member –*
>
> *(a) contravenes section 7, 8, 10, 19, 21 (1) or 26;*
>
> *(b) commits an act mentioned in section 17 (1) (a), (b) or (c) or (2) (a), (b), (c), (d) or (e);*

(c) wilfully fails or refuses to obey any rule, order or resolution of a House or the Houses; or

(d) commits an act which in terms of the standing rules constitutes-

(i) contempt of Parliament; or

(ii) a breach or abuse of parliamentary privilege.

[25] Section 7 is headed "Prohibited acts in respect of Parliament and members," and provides that "A person may not" commit a range of offences labeled (a) – (f). It follows that the reference to 'a person' in s 7 must be construed to include 'a member'. In fact section 7(e) provides that 'a person', which includes 'a member', may not '*...while Parliament or a House or committee is meeting, create or take part in any disturbance within the precincts'.* Similarly, the reference to 'a person' in section 8(1), which is headed," Improper influence of members"- must be construed to include a member. In terms of such section, such persons are precluded from taking certain measures by *inter alia* fraud, intimidation, force, insults or threats of any kind to induce a benefit of any nature. The same applies to sections 19 and 21(1) where the reference to 'a person' must be read to include 'a member'.

[26] On the other hand, there are sections in the Act that specifically state whether a reference to "persons" includes members. For instance, in section 25 a member is explicitly excluded from the provision, as it reads, 'A person, other than a member,..'. On the other hand the provisions in Section 27 explicitly include, a member, as it reads', A person, including a member,..'.

[27] The provisions of s 11 under attack fall under chapter 3, which chapter is headed 'Privileges, Immunities, Independence and Protection of Members and Parliament'. In the context in which the section appears and given the ordinary purpose at which it is directed, the section does not grant a privilege or an immunity (as reflected in the preamble) to the House as a whole or to members in general. It is rather a tool to maintain order and it indeed grants a particular power to the Speaker, the Chairperson or a designated presiding officer, to summarily order the arrest and removal from Parliament of a person who creates a disturbance or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting.

[28] Our Higher Courts have repeatedly stated that Parliament has an important and very special role to play in our constitutional democracy. As was stated in Doctors for Life International v Speaker of the National Assembly and Others 2006 (6) SA 416 CC at 437 E. *'It is the principal legislative organ of the State. With due regard to that role, it must be free to carry out its functions without interference. To this extent, it has the power to "determine and control its internal arrangements, proceedings and procedures" '.*

[29] There is another principle equally at work in cases of this nature, namely, that the provisions of the Act need to be interpreted in congruence with the Constitution.

In De Lille at 869 A-B, the Court held that '*Section 2 of the Constitution expressly provides that law or conduct inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any decree, order or action of any official or body, which is not properly authorized by the Constitution is entitled to the protection of the Courts. No Parliament, no official and no institution is immune from judicial scrutiny in such circumstances.*'

[30] Taking into account the ordinary rules of grammar and the syntax in which the particular wording of s11 is expressed, it is indeed reasonably possible to construe the reference to 'a person' in the provision to include a 'member'. It is not difficult to imagine a situation where a member may create or cause a disturbance of such gravity that it undermines the authority or dignity of Parliament as a whole. In those instances common sense dictates that the Presiding Officer must be in a position to take decisive action as an orderly measure to protect the dignity of Parliament from obstruction, disruption and disturbances.

[31] On the other hand, objectively viewed, the word *'disturbance'* as it appears in the Act, has an extremely wide connotation. It is defined as *'any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee'* (My underlining). In real terms the definition is

so broad that the exercise of the right to free speech in the NA, NCOP or parliamentary meeting, which ordinarily and appropriately includes robust debate and controversial speech, can certainly constitute an act which can be construed to interfere with or disrupt proceedings. This extremely broad definition of the word "disturbance" in my view certainly creates tension as it detracts from a member's constitutional privilege of freedom of speech and freedom from arrest as envisaged in terms of s 58(1) and 71(1) of the Constitution. As was stated in Mazibuko NO v Sisulu and Others NNO 2013 (4) SA 243 WCC at 255 F:

> *"The public, in effect, own the national forum, parliament. It is the body of the citizens of South Africa in that it is comprised of the people's representatives, and the people are entitled, as citizens of South Africa, to hear what our national representatives have to say about a matter of such pressing importance. Of course, once the debate takes place and reasoned voices across the floor are heard, the majority may well vote the matter down and that would be the end of it. But what cannot be justified is that the debate should not be allowed to take place."*

[32] In the De Lille case supra at 873 B, the Court recognized that in order to achieve the result of ascribing any other 'privilege or immunity' to limit the right of free speech in the NA as protected under s 58 (2), national legislation was necessary. In this regard Mr. Rosenberg argued that s 11 of the Act is not the type of provision

envisaged in the De Lille case and under s 58 (2) and 71(2); but rather that legislation enacted in terms of s 58 (2) (or 71(2)) can only limit the privileges in s 58(1) (or 71(1)) if it creates a new ('or other') privilege or immunity for the House or Members. In this regard reference was made to sections 12 and 13 of the Act which allow the House to hold its members in contempt and deal with the member accordingly. Such sections essentially limit an existing privilege.

[33] Mr. Gauntlett responded by acknowledging that s 11 of the Act does not apply to a disturbance by a member of the NA or NCOP that may fall within the ambit of sections [58(1)(b)] and [71(1)(b)] of the Constitution, but persisted that properly interpreted, the latter provisions do not protect members against disruptive conduct amounting to a 'disturbance' as defined in the Act and this type of conduct is accordingly not protected by the Constitution.

[34] The provision in s 11 of the Act, in its true form, does not create a new privilege for a House or its Members. Rather, it gives a particular power to the Speaker, the Chairperson and other presiding officers. It further allows a member to be arrested not only for disruptive conduct but also for what a member may have said which may ultimately amount to disruptive conduct.

[35] The primacy of a Member of Parliament's right to freedom of speech and more particularly the right to articulate the needs, views and political and economic

attitudes of their constituency freely and without fear has been consistently recognized by our Courts. See De Lille supra at 871G-872A and 874G – 875A; Economic Freedom Fighters and Others v Speaker of the National Assembly and Others (21471/2014) [2014] ZAWCHC 204 (23 December 2014).

[36] In the De Lille case supra, at 872 I – 873 A and 873 B Mohamed CJ said the following regarding the right to freedom of speech in the Assembly:

> *"Not only is the right to freedom of speech in the Assembly expressly constitutionalized in s 58(1)(a) (subject to its Rules and orders), but the 'Rules and orders' which the Assembly makes to control its 'internal arrangements, proceedings, and procedures' must, in terms of s 57(1)(b), have due regard to representative and participatory democracy".*

and

> *'Section 58(2) does not itself 'prescribe' any other 'privilege or immunity', to limit the right of free speech in the Assembly protected by s 58 (1). National legislation is necessary to achieve that result.'*

[37] As noted in the De Lille case the right of members of the NA to freedom of speech as entrenched in the Constitution is subject to the 'Rules and orders' of the Assembly. Importantly, the power to make the Rules and orders vests in the NA itself (according to section 57(1)(b)). Section 70(1)(b) grants identical power to the NCOP.

[38] The NA and NCOP have indeed established Rules empowering presiding officers to deal extensively with members who deliberately disobey a Rule, are grossly disorderly, disregard an order or are in contempt of the authority of a presiding officer in Parliament. To that extent Rule 51 of the NA reads:

> *"if the presiding officer is of the opinion that a member is deliberately contravening a provision of these Rules, or that a member is in contempt of or is disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, he or she may order the member to withdraw immediately from the Chamber for the remainder of the day's sitting."*
> (Rule 37 in the NCOP is similar)

[39] In terms of Rule 52 of the NA a member may be suspended or censured. (In the NCOP Rule 38 is applicable). Furthermore, a member may be required to leave the precincts of Parliament and not to return until the sanction to be imposed upon him or her is announced (Rule 53). In the event of grave disorder, the meeting may be adjourned or suspended for a period of time. In this regard Rule 56 of the NA reads as follows:

> *"In the event of grave disorder at a meeting, the presiding officer may adjourn the meeting, or may suspend the proceedings for a period to be stated by him or her"*
> (In the NCOP Rule 41 is similar.)

[40] It is noteworthy that Parliament in its Rules does not rely on force as an appropriate measure to protect its orderly proceedings. Rule 44(1) of the NA does

recognize that freedom of speech and debate is 'subject only to the restrictions placed on such freedom in terms of the Constitution, or any other laws or these Rules.' However the freedom from arrest as contemplated in ss 58(1)(b) and 71(1)(b) of the Constitution on the other hand has no such limitation.

[41] In as much as Parliament is entitled to conduct its own affairs, the privilege of freedom of speech is vital to allow Parliament to perform its function of permitting unrestrained debate about matters of public importance. The Constitutional Court in Dikoko v Mokhatla 2006 (6) SA 235 (CC) at 252H- 253A, stated the following regarding privilege in a constitutional democracy:

> *"Immunising the conduct of members from criminal and civil liability during council deliberations is a bulwark of democracy. It promotes freedom of speech and expression. It encourages democracy and full and effective deliberation. It removes the fear of repercussion for what is said. This advances effective democratic government."*

[42] In weighing up the apparent purpose of s 11 and considering the ambit of its application, Mr Rosenberg's argument that Section 11 infringes a member's privilege to free speech and his or her privilege not to be arrested as protected under Section 58(1)(b) and 71(1)(b) cannot be faulted. This argument is far more plausible and constitutionally acceptable than the contention made by Mr Gauntlett. Section 58(2), in my view, envisages new privileges or powers which may limit freedom of speech,

[45] In view of the finding above it is unnecessary to deal with the challenge by the DA that s11 also violates the doctrine of separation of powers.

Remedies:

[46] In terms of s 172 of the Constitution, this Court is now obliged to make an order that is just and equitable under the circumstances. The DA has proposed a number of ways to remedy s 11 in order to place it within constitutional bounds. This Court is however not limited to those specific remedies sought by the DA.

[47] As a result of the finding that a member may not be arrested under s 11 if the conduct that led to the arrest is protected under s 58(1)(b) and 71(1)(b), the most appropriate remedy in my view would be notional severance to bring s11 within constitutional bounds. It will leave the text unaltered but limits the extent of its application by subjecting it to a condition.

[48] In the result the following order is made:

1. The Application succeeds with costs.

2. Section 11 of the Powers and Privileges and Immunities of Parliament and Provincial Legislatures Act, No. 4 of 2004, is declared inconsistent with the Constitution and invalid" *to the extent that it permits a member to be*

arrested for conduct that is protected by sections 58(1)(b) and 71(1)(b) of the Constitution".

3. The order in paragraph 2 is suspended for a period of 12 months in order for Parliament to remedy the defect.

4. The orders in paragraphs 2 and 3 above are referred in terms of s 15(1)(a) of the Superior Courts Act, NO. 10 of 2013, to the Constitutional Court for confirmation.

5. The Respondents are to pay the costs occasioned by the employment of two Counsel, jointly and severally, the one to pay the other to be absolved.

LE GRANGE, J

I concur

CLOETE, J

I concur

BOQWANA, J