

Muthambi's set-top box rule set aside

By [Thabiso Mochiko](#)

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Communications Minister Faith Muthambi was dealt another legal blow yesterday when the Supreme Court of Appeal set aside her decision not to encrypt state-supplied set-top boxes.



Faith Muthambi

Encryption is widely used by pay-TV channels to ensure that only those who have paid will receive their broadcasts.

Although encryption is not necessary for the reception of free-to-air broadcasts, e.tv said its ability to encrypt future broadcasts was "essential to its business plans". Without it, audiences would end up with a second-rate viewing experience and be unable to access premium shows.

E.tv challenged the minister's amendment of the digital broadcasting migration policy published in March last year which said the government-supplied boxes should not have encryption capabilities.

SA, along with the rest of the African continent, is migrating from analogue TV broadcasting to digital, a move that will result in more TV channels.

The boxes will be used to receive the digital signal. While the government has already begun the distribution of some of its free five million set-top boxes to indigent households, the process is more than a year behind schedule.

E.tv had previously argued that the amendment effectively barred it from ever being able to encrypt its broadcasts because the cost of doing this at a later stage was prohibitive.

This is the second high-profile case the minister has lost in seven months after Western Cape High Court Judge Denis Davis declared her appointment of SABC boss Hlaudi Motsoeneng "unlawful and irrational".

The ruling was scathing of Muthambi as it found that her failure to consult with the industry rendered the process of enacting the amendment irrational. The court also found that the minister was not empowered to issue such a binding direction, and she acted beyond her legal authority.

"Minister Muthambi's failure to consult, based upon her misunderstanding of what the 2015 amendment signified, was taken in a procedurally unfair manner and was irrational," the ruling stated.

The judge also ruled that by precluding the subsidised set-top boxes from having encryption capability the minister has made it impossible for e.tv and other broadcasters to broadcast encrypted signals to TV viewers who have subsidised boxes.

Muthambi's spokesman Mish Molakeng said the minister would "study the judgment and decide on how to proceed". He said the court had not ordered the reversal of the policy or interdicted the implementation of the project.

E.tv hopes the clarity provided by the ruling will aid in providing a proper approach to the implementation of digital migration. Mark Rosin, chief operating officer of e.tv, said the company was committed to the digital terrestrial TV (DTT) platform "but want it to happen in an inclusive and organised manner".

The ruling allowed the possibility of a "strong and stable DTT platform for free-to-air television viewers, offering the best local and international content".

Source: Business Day

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