

**ZUMA v DA; ANDPP v DA**

**20 OCTOBER 2017**

PRETORIA - After the Supreme Court of Appeal delivered judgment in **Zuma v Democratic Alliance; ANDPP v DA** on 13 October 2017, the National Prosecuting Authority (NPA) issued a statement in which it noted the judgment and highlighted the engagements the National Director of Public Prosecutions (NDPP) had with the Acting Head of the Directorate for Priority Crime Investigation (DPCI) prior to the delivery of the judgment on the availability of the witnesses and the documentary evidence.

Prior to the withdrawal of the criminal charges against Mr Zuma in April 2009, the list of witnesses attached to the indictment contained 218 names. Earlier this week the NDPP met with General Matakata and the investigating officer to establish the reasonable timeline it would take to verify the availability of the witnesses. It was agreed that the investigating officer would require at least 30 days to conduct an initial assessment prior to reverting to the NPA on the availability of the witnesses and any factor(s) which may or may not impact on the feasibility of the re-enrolment of the matter. As such, the investigating officer is expected to revert to the NPA hereon by no later than 30 November 2017.

In its previous media release, the NPA also referred to a letter received from Mr Zuma's lawyers days before the judgment was delivered in which the NPA was requested:

- (a) To afford Mr Zuma an opportunity to have his representations rationally considered;
- (b) To submit such further representations which as may be necessary in light of developments that had been reported in the media and which may impact on the integrity of the investigation;
- (c) Not to institute any court proceedings against Mr Zuma prior to having considered his representations.

It is instructive to record that the SCA *inter alia* found that:

- (a) Mr Mpshe SC incorrectly placed reliance on and invoked s179(5)(d) of the Constitution and s22(2)(c) of the NPA Act;
- (b) the allegations by Mr Willie Hofmeyr, a Deputy National Director of Public Prosecutions of political machinations on the part of Mr Leonard McCarthy, a Deputy National Director of Public Prosecutions at the time, were irrelevant and unconnected to the integrity of the investigation and the prosecution itself;
- (c) the reasons advanced by Mr Mpshe SC for discontinuing the prosecution did not impinge on the propriety of the investigation or the merits of the prosecution itself;
- (d) Mr McCarthy's alleged motive as to the timing of the serving of the indictment was irrelevant;
- (e) discontinuing a prosecution where the merits are good can hardly advance the course of justice;

- (f) it is was regrettable that the picture that emerged was one of Mr Mpshe SC and Mr Hofmeyr having strained to find justification for the termination of the prosecution;
- (g) as a result the decision to terminate the prosecution by Mr Mpshe SC was irrational.

The Court specifically *inter alia* also recorded the following:

- (1) That according to Mr Hofmeyr, the written representations made on behalf of Mr Zuma on 10 February 2009, and which Mr Mpshe SC considered, covered the following topics:

- “(a) *The merits of the prosecution;*
- (b) *His intention to challenge the inclusion of racketeering charges in the indictment and whether this would inevitably lead to delays in the prosecution;*
- (c) *Mr Zuma’s contention that delays in finalising the prosecution and the trial would undermine his right to a fair trial;*
- (d) *The financial costs of the prosecution;*
- (e) *Policy and legal implications associated with prosecuting a sitting President.*
- (f) *The risks of political, economic and social instability, should the NPA proceed with its prosecution of Mr Zuma;*
- (g) *The impact of the trial on the administration of justice. They argued that even if the NPA secured a conviction, the majority of South Africans would still believe that Mr Zuma had been treated unfairly;*
- (h) *The existence of a political conspiracy, of which the NPA was part, to discredit Mr Zuma.”*

- (2) That Mr Mpshe SC, on 6 April 2009, in publicly announcing his decision to discontinue the prosecution of Mr Zuma, considered the following submitted by Mr Zuma’s legal representatives:

- “• *The substantive merits*
- *The fair trial defences*
- *The practical implications and considerations of continued prosecution.*
- *The policy aspects militating against prosecution.”*

and that Mr Mpshe SC could find nothing in respect of the first three grounds that militated against the continuation of the prosecution.

The NDPP is of the view that in light of the judgment of the SCA, it appears that any further representations envisaged by Mr Zuma should relate to issues not previously considered.

As a result, Mr Zuma has been advised through his lawyers that he has until 30 November 2017 to submit any envisaged representations to the NDPP.

Likewise, the DA has been invited, in the event they deem it necessary to also submit further representations, which should reach the Office of the NDPP by no later than 30 November 2017.

In relation to the judgment of the SCA being replete with criticism directed at Mr Hofmeyr, the NDPP regards this in an extremely serious light and has written to Mr Hofmeyr, requesting him to provide his comments thereon.

The NDPP will advise on the way forward after receiving feedback from the investigating officer as to the availability of the witnesses and having considered representations from Mr Zuma, should any be forthcoming and from the DA, should any be forthcoming.