



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
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*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

**African Transformation Movement v The Speaker of the National Assembly and Others [2021] ZASCA 164**

Today the Supreme Court of Appeal upheld an appeal from the Western Cape Division of the High Court, Cape Town (per Lekhuleni AJ). The African Transformation Movement (ATM) tabled a motion of no confidence in the President of the Republic in the National Assembly. It thereafter requested that the Speaker hold the vote of no confidence by secret ballot. When she declined this request, the ATM requested that she reconsider. She reconsidered but again declined. The ATM then approached the high court to review this decision but the application was dismissed.

On appeal, with the high court having given leave, the ATM contended that the decision of the Speaker offended the rationality principle and should have been reviewed and set aside on that basis. The aspect of this principle relied upon was that the Speaker had believed that, for her to allow the vote to proceed by way of secret ballot, the ATM bore an onus to show the need for a secret ballot by producing evidence or reasons for that procedure to be adopted. The ATM submitted that since the Speaker had failed to appreciate 'how she was to go about making her decision

she could not properly and lawfully apply her mind to the merits'. In such circumstances, the correctness of the ultimate decision is irrelevant.

The high court found that there was no such onus to discharge. This was accepted by the Speaker for the purposes of the appeal. She contended, however, that the procedure she adopted arrived at the correct decision. That being the case, the procedural error was not a material one and that her decision was not susceptible of review.

The SCA analysed the Constitutional Court judgment in the matter of *United Democratic Movement v Speaker of the National Assembly and Others*. The correct point of departure requires a conspectus of the reasonable and legitimate circumstances obtaining at that time which could assist in determining the best procedure to ensure that Members exercise their oversight powers accorded them under the Constitution most effectively as regards a particular vote of no confidence.

The imposition of an onus on a party requesting that a vote of no confidence be held by secret ballot was a fundamentally flawed approach to the exercise of the discretion of the Speaker. She asked the wrong question. It was 'has the ATM discharged the onus to convince me to decide that a vote by secret ballot should be held'. That question implied a point of departure that, absent the discharge of such an onus, a vote of no confidence in the President should be by open ballot. She did not approach the decision from a situation-specific perspective. This shows that she misunderstood the nature of the discretion to be exercised. The incorrect procedure of requiring the ATM to discharge an onus was material to the resulting decision. There was thus a failure to exercise the discretion accorded to her. The exercise of her discretion was not rationally related to the purpose for which it had been given.

The SCA thus upheld the appeal with costs and substituted a decision reviewing and setting aside the decision of the Speaker to refuse the request of the ATM. The matter was referred back to the Speaker for a fresh decision.