



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case no: 263/08

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

and

SAROJINI MOODLEY AND OTHERS

RESPONDENTS

From : The Registrar, Supreme Court of Appeal
Date: 26 November 2008
Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The SCA today upheld an appeal by the National Director of Public Prosecutions against a judgment of the High Court, Pietermaritzburg, setting aside three counts of racketeering in drugs preferred against the respondents.

The respondents had sought to have the counts set aside on the ground that they had been charged with racketeering before Mr Bulelani Ngcuka, the National Director of Prosecutions, had given his written authorisation for the prosecution, as required by the Prevention of Organised Crime Act. It was common cause that the respondents had not yet been asked to plead to any of the counts contained in the charge sheet when the written authorisation was given.

In the High Court Mr Justice Nicholson, with whom Mr Justice Ntshangase concurred, set aside the racketeering counts on a totally different ground and one not raised by the respondents, namely that Mr Ngcuka's written authorisation was invalid for want of particularity regarding such details as to dates and the places at which the offences were committed.

On appeal, the respondents abandoned the ground relied upon by the High Court and sought the relief they claimed on the ground they had advanced in the High Court and which had not been dealt with in the judgment of the High Court.

The SCA noted that the abandonment was correct in the circumstances and that the order made by the High Court regarding the invalidity of the authorisation was not to serve as a precedent. With regard to the ground relied upon by the respondents, the SCA held that whatever the position may have been prior to the National Director's written authorisation, once it was granted the prosecution was lawful. Accordingly the appeal had to succeed.

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