



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*

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The SCA today delivered judgment in the case of *National Director of Public Prosecutions v Zuma* (573/08) [2009] ZASCA 1 (12 Jan 2008). It upheld an appeal by the NDPP against a judgment by Nicholson J in which he had set aside the indictment of Mr Zuma on 18 main counts of racketeering, corruption, money laundering, tax evasion and fraud. The effect of the judgment on appeal is that the prosecution may proceed.

The case concerned in the main the interpretation of section 179 of the Constitution. The SCA held that the section did not require that the NDPP had to invite Mr Zuma to make representations as to why he should not be prosecuted before indicting him and to provide him with a full explanation why a former decision not to prosecute was not adhered to.

The SCA also held that Mr Zuma had no legitimate expectation that he would have received such an invitation and explanation. It noted that Mr Zuma, knowing that he could make representations, chose not to make any.

Aware of the possible political implications of the judgment, the SCA emphasised that the judgment is not about the guilt of Mr Zuma; it is not about the question whether the decision to prosecute was justified; it is not about who should be the president of the ANC; it is not about whether the decision of the ANC to ask Mr Mbeki to resign was warranted; and it is not about who should be the ANC's candidate for the presidency in 2009. More particularly, it is not about whether there was political meddling in the decision-making process.

The judgment, however, deals with the question whether the findings by Nicholson J relating to political meddling were appropriate or could be justified. It came in this regard to the conclusion that his findings were inappropriate and could not be justified on the papers before him. The SCA found that the learned judge had failed to have regard to some basic tenets concerning the judicial function and that he had failed to apply fundamental rules of procedure. This led to the erroneous findings.

The SCA nevertheless dismissed an application by Mr Mbeki and the Government of the RSA to intervene on the ground that they had no interest in the relief but only in the reasons of the court below.

The members of the Court were Harms DP and Farlam, Ponnann, Maya and Cachalia JJA. The judgment will be available on the Court's website [www.supremecourtofappeal.gov.za](http://www.supremecourtofappeal.gov.za) or at [www.saflii.org.za](http://www.saflii.org.za).

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