

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 2010

STATUS: Immediate

*Van der Merwe v National Director of Public Prosecutions*

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.

The Supreme Court of Appeal (SCA) today dismissed the appeal against the refusal by the high court of a declaratory order to pronounce the consequences of an allegedly unauthorised investigation of the case against the appellant by the former DSO ('the Scorpions') unconstitutional, invalid and unlawful.

The appellant faces charges of transgressing the Exchange Control Regulations and defeating the ends of justice in the regional court. He alleged that the Scorpions had investigated the case against him. Such investigation would have fallen outside the mandate of the Scorpions. Before pleading to the charges, he launched an urgent application in the high court for a declaratory order that the consequences of the Scorpions' alleged actions were unconstitutional, invalid and unlawful. The high court dismissed the application, holding that the issues raised by the appellant should be decided by the trial court. The SCA described the application as pre-trial litigation

designed to avoid the necessity of having to plead to the charges and aimed at pre-empting the trial court's ruling on the admissibility of evidence tendered in support of the State's case. The appeal was dismissed.