



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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

Chairperson of the National Council of Provinces v Malema (535/2015) [2016] ZASCA 69 (20 May 2016)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed the appeal by the Chairperson of the National Council of Provinces against a decision of the Western Cape Division of the High Court, Cape Town, and accordingly upheld an order reviewing and setting aside certain rulings that she had made against Mr Julius Malema (the first respondent) while chairing a joint sitting of the National Assembly and the National Council of Provinces.

The issue before the SCA was whether the court a quo was correct in reviewing and setting aside as unlawful the Chairperson's rulings during a parliamentary debate following the 2014 State of the Nation Address that: (i) Mr Malema's statement that the African National Congress (ANC) government had 'massacred the people in Marikana' was unparliamentary; (ii) Mr Malema must withdraw that statement; and (iii) Mr Malema's refusal to comply with her order to withdraw the statement amounted to contempt of her authority, justifying an order that he must leave the House.

The respondents (Mr Malema and his political party, the Economic Freedom Fighters) did not dispute Parliament's power to self-regulate its procedures within constitutional bounds, or the validity of a standing order prohibiting Members of Parliament (MPs) from imputing improper motives to other MPs, or casting personal aspersions on the integrity of MPs, or verbally abusing them. Rather they argued that the Chairperson unlawfully and irrationally applied this standing order.

The SCA held that the purpose of the standing order is to ensure that parliamentary debates are not clouded by personal insults. However, according to the SCA, it does not, and cannot, go as far as

impeding political speech. Nor can it operate to censor the criticism of the government or the ruling party. Mr Malema was clearly criticising the government and its ruling party, and not ANC MPs, either individually or collectively. The Chairperson's interpretation of the standing order could not withstand constitutional scrutiny, as the consequence would be that any criticism made against the government is also criticism against individual MPs who are members of the ANC. Accordingly, the Chairperson misconstrued her powers under the standing order, and her ruling that Mr Malema's statement was unparliamentary fell to be set aside.

In addition, the SCA held that even if Mr Malema's words had targeted MPs, he still would have been constitutionally protected. While Parliament is empowered to make rules, its rules must be interpreted in conformity with the crucial guarantee of freedom of speech in Parliament afforded by s 58(1) of the Constitution. Whatever the standing order means, it cannot be interpreted to prohibit criticism of the government and other species of political speech, and Mr Malema's criticisms fell in the heartland of protected political speech.

Finally, the SCA rejected the Chairperson's argument that Mr Malema's disobedience justified his removal, regardless of the correctness of the ruling. The SCA found that Mr Malema was not suspended because his behaviour was obstructive or disruptive or impeding the management of orderly business within the House, but rather as a punishment for making a speech which was considered objectionable by some. The former kind of suspension is a necessary protective measure, while the latter is not. And in the light of the setting aside of the basis for the suspension, the SCA held that the decision ordering the suspension must also be set aside.

Accordingly, the SCA dismissed the appeal.

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