



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 2 November 2016  
**STATUS** Immediate

*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 Helen Suzman Foundation v Judicial Service Commission (145/2015) [2015] ZASCA 161 (2 November 2016)***

The Supreme Court of Appeal (SCA) today dismissed an appeal against the judgment of the Western Cape Division, Cape Town (Le Grange J) relating to whether the private deliberations of the Judicial Service Commission (JSC) held in a close session on judicial appointments should form part of the record contemplated by Uniform Rule 53 in a review application brought by the Helen Suzman Foundation (HSF). HSF brought the review application to challenge the JSC's recommendation of Dolamo AJ instead of Mr Gauntlett SC for appointment to the Western Cape Division of the High Court.

The SCA held that constitutional principles of openness and accountability are not absolute and that confidential deliberations of the JSC enjoy legislative recognition which warranted their non-disclosure under Uniform rule 53 having regard to the JSC's unique features which set it apart from other administrative bodies and provide sufficient safeguards against arbitrary and irrational decision-making. The SCA held that the relief sought by HSF would undermine the JSC's constitutional and legislative imperatives by, inter alia, stifling the rigour and candour of the deliberations, deterring potential applicants, harming the dignity and privacy of judicial candidates who applied with the expectation of confidentiality of the deliberations and generally hamper effective judicial selection. The SCA concluded that a recording of the private deliberations on judicial appointments by the Judicial Service Commission, which are properly conducted in terms of the Judicial Service Commission Act 9 of 1994 and regulation 3(k) made thereunder, does not form part of the record of its proceedings for purposes of Uniform rule 53(1)(b).

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