



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

Date: 31 March 2011

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 ACTING CHAIRPERSON: JUDICIAL SERVICE COMMISSION & OTHERS v THE
PREMIER OF THE WESTERN CAPE PROVINCE

1. The SCA today held that the Judicial Service Commission was not properly constituted, nor did it act with the requisite majority, when it dismissed the complaint lodged by Justices of the Constitutional Court against the Judge President of the Cape High Court. The proceedings of the JSC and its decision were declared unconstitutional and set aside.
2. The complaint of the Justices was that the Judge President had improperly sought to influence two of them in a case involving the President, Mr Jacob Zuma.
3. The SCA held that in terms of the Constitution, the Premier of the Western Cape was entitled to be present when the complaint was considered by the JSC. The SCA also held that the decision of six of the ten members of the JSC who were present, was not a decision of the majority of the JSC, which comprises 15 members when allegations of judicial misconduct are considered. A majority of at least eight members was therefore required for a decision of the JSC in such a case.
4. The JSC submitted that the decisions taken should not be set aside because of considerations of pragmatism and practicality. The SCA remarked that it would be a sorry

day for our constitutional democracy were serious allegations of judicial misconduct to be swept under the carpet for such reasons. The JSC was also criticised for its initial refusal to disclose the number of those who had voted for and against the resolution. The SCA said that the JSC's policy not to do so could not be justified when this information was crucial for the determination of an issue legitimately raised and upon which a court was required to adjudicate.

5. The argument on behalf of the Judge President that the principle of the separation of powers required the Premier to be excluded when questions of judicial misconduct were considered by the JSC, was rejected. The SCA pointed out that the Minister of Justice and Constitutional Development was included, as were four persons nominated by the President as head of the executive, whenever the JSC sat. The Judge President also submitted that setting aside the decisions of the JSC would be an exercise in futility in as much as the Premier had disqualified herself from sitting on the JSC because of the allegations of bias made against her by the Judge President.

6. The SCA rejected the arguments by both the JSC and the Judge President. The SCA held that the JSC, properly constituted and by majority vote as prescribed by the Constitution, had not performed its constitutional mandate to consider and make findings on whether there had been judicial misconduct. It was therefore imperative that the findings of the JSC be set aside to enable it to perform the function which it was still obliged to perform.

7. The appeal by the JSC and the Judge President was accordingly dismissed and they were ordered to pay the Premier's costs.

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