

South Africa: Zuma faces corruption charges after court reverses previous judgment

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On January 12, in a unanimous decision, the five Supreme Court of Appeals (SCA) judges in Bloemfontein overturned the finding of Judge Nicholson of the Pietermaritzburg High Court, effectively reinstating the criminal charges against African National Congress (ANC) President Jacob Zuma.

Zuma, who is expected to be voted in as South African president in the forthcoming elections, appeared to have escaped prosecution on fraud and corruption charges after Judge Nicholson's ruling last September.

The decision is the latest twist in a series of court cases and appeals that began in June 2005, when Zuma, then deputy president of South Africa, was charged with corruption after his financial adviser, Schabir Shaik, was found guilty of attempting to solicit a bribe from Thales, the French arms manufacturer.

Zuma was removed from office by then President Thabo Mbeki, and a bitter struggle developed in the ANC between factions around Mbeki and Zuma, who was backed by the South African Communist Party (SACP) and the trade union federation COSATU.

After Nicholson had stated that "political meddling" by Mbeki could not be excluded in the case against Zuma, Mbeki was forced to resign from the South African presidency last November and was replaced by caretaker president Kgalema Motlanthe.

The effect of the judgment is that the decision to charge Zuma with racketeering, money laundering, fraud and corruption remains, raising the prospect that he will enter the presidency with criminal charges hanging over him.

Zuma's faction is now attempting to get the case against him dropped or at least postponed, as it threatens to cut across campaigns for national elections that take place in three months time. The appeal decision reflects the concern of sections of the ruling elite in South Africa about a Zuma presidency. Despite reassurances from Zuma that he will maintain the same pro-business agenda that the ANC has had since it came to power,

there are fears that his populist electioneering demagoguery is building up too many expectations in the mass of the population. Social tensions are mounting in South Africa as a result of widespread poverty, unemployment and lack of social provision.

The appeal case was brought by the National Director of Public Prosecutions (NDPP), with representations from Thabo Mbeki and the government of the Republic of South Africa.

The SCA's five judges lambasted Judge Nicholson's decision to set aside two decisions to prosecute Zuma, accusing him of failing to "confine the judgment to the issues before the court", "creating new factual issues", "making gratuitous findings against persons not called upon to defend themselves", "failing to distinguish between allegation, fact and suspicion" and "transgressing the proper boundaries between judicial, executive and legislative functions".

The SCA's judges did not mince words in their condemnation of Nicholson, stating that "he changed the rules of the game, took his eyes off the ball and red-carded not only players but also spectators".

The SCA stated that Judge Nicholson had injected his personal views and political preferences into the judgment, citing two instances: first, where Nicholson had called for a commission of inquiry into the 1999 arms deal—the deal over which Zuma originally faced corruption charges—stating that such an initiative was necessary to "rid our land of this cancer that is devouring the body politic". Second, his criticism of then president Thabo Mbeki's decision to dismiss Zuma as deputy president and his decision to stand for re-election as president of the ANC "with the knowledge that he could not serve another term as president of the country".

Much of Nicholson's judgment dealt with the notion that there was an improper motive behind the prosecution of Zuma. However, the SCA swiftly dismissed this, ruling that "[a] prosecution is not wrongful merely because it is brought for an improper purpose. It will only be wrongful if, in addition,

reasonable and probable grounds for prosecuting are absent”.

Furthermore, Nicholson had maintained that there was a strategy to prosecute Schabir Shaik, Zuma’s financial advisor and alleged co-conspirator in the charge of corruption brought against Zuma, “and when he was convicted, to dismiss him as deputy president”. The SCA pointed out that this was not included in Zuma’s court papers. “They were instead part of the judge’s own conspiracy theory and not one advanced by Mr Zuma”.

Nicholson was further condemned for “judgment by ambush” in relying on a newspaper article annexed to Zuma’s court papers and other unconfirmed newspaper speculation.

The crux of Zuma’s argument in the High Court case was that the National Director of Public Prosecutions had not afforded him a hearing before deciding to prosecute him. Ultimately Nicholson set aside the decision to prosecute Zuma based upon his finding that this decision had been unprocedural. The SCA disagreed with Nicholson, stating that “the NDPP never refused to afford Mr Zuma a hearing”.

While upholding the National Director of Public Prosecution’s appeal, Zuma was ordered to pay the NDPP’s costs. Reportedly, these costs run into many millions of rand.

Although Mbeki’s application to intervene in the SCA was dismissed, he issued a statement on the following day expressing his satisfaction with its judgment, which had effectively cleared him of the allegations that led to his forced resignation.

Soon after the SCA had delivered its judgment, the ANC issued a statement reiterating its position that “the judgment will not affect the decision of the ANC that Zuma be the ANC’s candidate for the 2009 elections”. According to newspaper reports, those in favour of a compromise presidential candidate had been sidelined by Zuma supporters. Party spokesman Carl Niehaus stated that “Nothing in this judgment changes anything”.

Reportedly, sources within the tripartite alliance of COSATU, the South African Communist Party and the ANC boasted that any criminal case against Zuma would be “quashed” after the elections. “You cannot have a president hauled before the courts like a common criminal. We must respect the office of the president”, said one alliance leader.

Zuma’s legal team is currently preparing a Constitutional Court appeal to have the charges against him dismissed. According to some legal experts, this could be protracted and ultimately unsuccessful.

Despite the outward show of confidence, Zuma’s court setback has deepened the crisis in the ruling ANC which has been haemorrhaging members. Whilst the ANC are expected to win the elections, their large majority could be dented by the challenge from the newly formed breakaway Congress of the People (COPE), led by former Mbeki supporters.

Appearing before thousands of supporters at the recent launch of the ANC’s election manifesto, Zuma promised rural development, free education, job creation and a reduction in crime. He also promised that the ANC’s policy of black economic empowerment and affirmative action policies, which have delivered benefits to the black bourgeoisie, would be retained. This is a major plank of COPE’s policy, which is attempting to win support from the same layers.

Zuma has no intention of challenging the domination of South Africa’s economy by the banks and mining corporations, but his supporters in COSATU and the SACP hope to head off the anger that has built up in the working class at the free market policies brought in by the ANC government. The impact of recession has meant around 200,000 people lost their jobs in the last quarter of 2008, according to *Business Day*, and at least 20,000 more job losses are expected in the first part of 2009. These figures are over and above the 165,000 lost in the informal sector—the primary area of employment in South Africa—as well as the unknown numbers unemployed as small businesses cut back or close down.

There is growing concern in the ruling class that the approach of the Zuma faction is too risky. A commentator in *Times of South Africa*, Justice Malala, has written, “The ANC is more deeply divided under Jacob Zuma than it was under Thabo Mbeki.... If anyone dares speak they soon find themselves attacked by the likes of Julius Malema [vocal leader of the ANC Youth League, renowned for his statement that ‘we are prepared to take up arms and kill for Zuma’], following which they are discredited in the media and in party meetings”.

Malala added that Zuma is “a man who will be the lamest and most manipulated president this country has seen”.



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