



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: 1 June 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 PUBLIC PROTECTOR v MAIL & GUARDIAN LIMITED & OTHERS**

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order of the North Gauteng High Court, which had set aside a report produced by the Public Protector.

The report arose from an investigation that the Public Protector purported to conduct, at the request of two members of the National Assembly, concerning allegations made in a series of articles that had been published by the Mail & Guardian newspaper. The articles made revelations that were dubbed “Oilgate” by the newspaper.

The SCA held that the substance of the matters that were referred to the Public Protector for investigation was not investigated at all. As for the matters that he

purported to investigate, it held that the investigation was so scant as to amount to no investigation at all.

The SCA said that the minimum that is required for an investigation of any kind is that it must be approached with an open and enquiring mind. It said that there was no evidence of that state of mind in the investigation in this case. The hallmark of the investigation was that responses were sought from people in high office and recited without question as if they were fact.

It held that the purported investigation provided no basis for any of the findings of the Public Protector, and that the court below had correctly set aside the report. Ancillary orders directing the Public Protector to investigate afresh, and in doing so to take certain matters into account, were, however, set aside. The SCA said that a court should not make an order unless the order is clear as to what is required. The court could not direct the Public Protector as to the manner in which any further investigation should be made and for that reason it set aside those orders.