



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 17 April 2014

STATUS Immediate

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

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS v FREEDOM UNDER LAW (67/14) [2014] ZASCA 58 (17 APRIL 2014)

Freedom Under Law (FUL) sought an order in the North Gauteng High Court to set aside four executive decisions; (a) the decision by the Head of the Specialised Commercial Crime Unit of the National Prosecuting Authority, Advocate Mrwebi to withdraw criminal charges of fraud and corruption against Lieutenant General Richard Mdluli (Mdluli) the National Head of Crime Intelligence of the South African Police Services; (b) the decision by the Director of Public Prosecutions, South Gauteng, Advocate Chauke, to withdraw criminal charges of murder and seventeen related crimes — including kidnapping, intimidation and assault — against Mdluli; (c) the decision by the National Commission of the South African Police Services (the Commissioner) (to withdraw disciplinary proceedings against Mdluli); and (d) the decision by the Commissioner to terminate Mdluli's suspension from office and to reinstate him in his position.

The North Gauteng High Court set aside these four decisions and in addition ordered the executive authorities involved to proceed with the criminal prosecution and the disciplinary proceedings without delays.

On appeal the SCA confirmed the setting aside of the decisions in (a), (c) and (d) but held that (b) could not be described as irrational. In addition the SCA did not confirm the High Court's orders to proceed with the criminal prosecution and the disciplinary proceedings without delay because, so the SCA held, this would constitute undue interference with the functions of the executive and a transgression of the separation of powers.