



FW de Klerk
FOUNDATION

SHAUN ABRAHAMS' REMOVAL WELCOMED BUT CONCERNS ABOUT THE NPA LINGER

The FW de Klerk Foundation welcomes today's majority judgment handed down by the Constitutional Court regarding the position of the National Director of Public Prosecutions (NDPP). It is further testament to the tenacious efforts to ensure the adherence to the Rule of Law by civil society, given that the application before the Court was launched by Corruption Watch, Freedom Under Law (FUL) and CASAC. The judgment, which comes five months after the matter was argued, brings finality to the question of whether Shaun Abrahams is rightfully in the office, given the unlawful departure of his predecessor, Mxolisi Nxasana.

The strongly-worded judgment in which former President Jacob Zuma is said to have abused his power in the unlawful removal of Nxasana perhaps reflects exasperation on the part of the Judiciary. Yet again, the courts are forced to intervene in a matter involving the abuse of power and political interference in State institutions.

It must be pointed out that the Constitutional Court did not find that Shaun Abrahams is not fit and proper to hold the position. Nonetheless, the decision makes apparent that due process is a vital cog in ensuring public trust in State institutions. Shaun Abrahams' appointment was always tainted by his predecessor's unlawful departure, while Shaun Abrahams himself did little to reassure the South African public of the ability of the prosecuting authority to act without fear or favour, in line with its constitutional mandate. It is vital too, that the Court made apparent that Shaun Abrahams, as a beneficiary of the improper conduct of former President Jacob Zuma, had no right to remain in the office.

The same decision struck down provisions of the *National Prosecuting Authority Act* (namely section 12(4) and section 12(6)) concerning the President's powers to suspend without pay and for an indefinite period. This aspect of the decision is particularly welcomed, as it strengthens the NPA and makes the body less liable to political interference in the future.

That is not to suggest that the problems that have besieged the nation's crime-fighting body are close to being resolved. The arduous task of finding a suitable replacement for Shaun Abrahams now begins. The Court has given President Ramaphosa 90 days in which to do so. This search takes place while senior members in the ranks of the NPA, including Nomgcobo Jiba and Lawrence Mrwebi, still have questions regarding their competency and fitness to hold office. In the meanwhile, the Hawks have lost a series of court cases regarding allegations of State capture involving the Gupta family. Now, more than ever, there is a need for the NPA to reassure the nation of its capabilities in holding both individuals and the State alike, accountable.

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