



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### United Democratic Movement v Speaker of the National Assembly and Others

CCT 89/17

Date of judgment: 22 June 2017

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#### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in an application by the United Democratic Movement against the Speaker of the National Assembly and the President of the Republic of South Africa. All political parties represented in the National Assembly have been joined to these proceedings. Four entities involved in issues relating to constitutionalism, good governance, the rule of law and human rights have also successfully applied to be joined as friends of the Court.

The application questions whether the Constitution requires, permits, or prohibits votes by secret ballot in motions of no confidence in the President of the Republic.

The request for the scheduling of the motion of no confidence was allegedly necessitated by the removal from office of the former Minister of Finance, Mr Pravin Gordhan, and his Deputy, Mr Mcebisi Jonas. This is said to have led to South Africa's credit rating being downgraded to junk status which resulted in serious economic consequences, particularly for poor South Africans. Allegedly, threats of physical violence and removal from the position have been made against any Member of the National Assembly who is discovered to have voted for removal of the President. It was argued that if the voting process were to expose their identities, these factors would prevent members of the National Assembly to vote according to their individual conscience without undue influence, intimidation or fear of disapproval by others.

Those in support of the secret ballot argue that sections 86 and 102(2) of the Constitution, read with Item 6 of Part A of Schedule 3 to the Constitution and Rules 6, 103, 104 and 129 of the Rules of the National Assembly, require that since the President is elected via secret ballot, the same practice should apply when seeking her or his removal from office. They argue that at the very least, the Speaker retains a discretion to allow a secret ballot to decide the fate of the President.

The President contends that Members of the National Assembly are required to carry out the decisions of their respective political parties, and that party discipline has been mischaracterised as intimidation. He says that the constitutional values of accountability and transparency should trump all other issues raised by these parties in support of voting by secret ballot, and that to compel a secret ballot would trench upon the separation of powers.

The Speaker says that she is open to persuasion by the aggrieved political parties to consider allowing a secret ballot vote, but contends that neither the Constitution nor the rules of the National Assembly provide for voting on a motion of no confidence by secret ballot.

In the unanimous judgment by Mogoeng CJ (Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Mojapelo AJ, Pretorius AJ and Zondo J concurring), the Constitutional Court held that a motion of no confidence fundamentally serves the purpose of enhancing the effectiveness of regular accountability mechanisms and of safeguarding the best interests of the South African people. It also held that the Speaker does have the power to prescribe that a motion of no confidence in the President be conducted by secret ballot under appropriate circumstances.

This is so because although the Constitution prescribes voting by secret ballot in the general elections and the elections of the Deputy Speaker, the Speaker and the President, it is silent on the voting procedure for their removal. The decision therefore remains with the National Assembly to determine the voting procedure in conducting a motion of no confidence in terms of its constitutional powers under section 57 of the Constitution. Rules 102, 103 and 104 of the National Assembly also empower the Speaker, on behalf of the Assembly, to prescribe an open ballot or a secret ballot in a motion of no confidence in the President, though this determination is situation-specific.

When the Speaker exercises the power to determine the appropriate voting procedure in the motion under particular circumstances, several factors would have to be taken into account. These include but are not limited to: (a) whether the chosen voting procedure would allow Members of the National Assembly to vote according to their conscience and in the furtherance of the best interests of the people; (b) whether the prevailing circumstances are either peaceful, or toxified and potentially hazardous; (c) the imperative of the Speaker's impartiality must be consciously factored into the decision-making process; (d) the effectiveness of a motion of no confidence as an accountability and consequence-management tool must be enhanced by the chosen voting procedure; (e) the possibility of corruption or bribes in the event of a secret ballot must be considered;

(f) the need for the value of transparency to find expression in the passing of the motion must be taken into account; (g) the decision must be rationally connected to the purpose of a motion of no confidence and should not be made arbitrarily.

For these reasons, the Court declared that the Speaker has the constitutional power to prescribe voting in a motion of no confidence in the President to be conducted by secret ballot. It set aside the Speaker's decision of 5 April 2017 to refuse prescribing a secret ballot, and remitted the UDM's request for a fresh decision back to the Speaker for reconsideration.