

Experts split over whether JZ can be charged again

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Legal experts are divided on whether opposition parties will be able to mount any legal challenge to yesterday's National Prosecuting Authority decision to drop all charges against ANC president Jacob Zuma.

DA leader Helen Zille says she will file an application in the high court this morning for a judicial review of the decision.

And yesterday Cope, the DA and the Independent Democrats confirmed that they would launch a "joint united action, including legal action" against Zuma, following the NPA's decision to drop all charges against the man poised to be the country's next president.

Centre for Applied Legal Studies' director Raylene Knightley said, "The NPA's decision could be reviewable if they can convince the judge that the National Director of Public Prosecutions made an error in dropping the charges, or had ulterior motives in deciding not to prosecute, or that he made the decision based on irrelevant considerations.

"Because the NPA admitted that their case against Zuma was strong, the DA could argue that the NDPP was not authorised to drop the charges," Knightley said.

Centre for Constitutional Rights director Nicola de Havilland said because NDPP's Mokotedi Mpshe had "erred in his decision", a private prosecution could be on the cards.

One of South Africa's top legal minds, senior counsel Wim Trengove, poured cold water on this idea.

Trengove, who acted for the NPA in the case against Zuma, told *Sowetan* that private prosecutions were for victims of crime or their next of kin.

"I don't think there is any prospect of opposition parties succeeding in bringing a private

OPPOSITION DEMAND REVIEW



IT'S OVER: Acting national director of public prosecutions Mokotedi Mpshe announces the decision to drop corruption charges against ANC president Jacob Zuma at the NPA's headquarters in Pretoria.

PHOTO: VELI NHLAPO

prosecution based on the notion that everyone in the country is affected by corruption," Trenngove said.

But University of KwaZulu-Natal law professor Mangay Reddi said the law allowed anyone who felt they had been injured by corruption, and who was therefore substantially

interested in a trial proceeding, to bring a private prosecution.

Reddi said it would be the first such case in South Africa's legal history if opposition parties took the case to court.

She rejected suggestions that Zuma could not be privately prosecuted because yesterday's NPA

decision was tantamount to an acquittal.

"Zuma has not been acquitted.

"An acquittal is only possible if the accused is found not guilty. There is no way for someone who has not appeared in court to face charges to apply for an acquittal," Reddi said.

She added that the NPA would not be able to prevent anyone from bringing a private prosecution of Zuma.

Although the NPA would not be obliged to hand over its files of evidence against Zuma, opposition parties could use the Promotion of Access to Information Act to get their hands on the information, Reddi said.

“They would need resources – they would have to put down an amount of money as security with the court.

“They would have to satisfy the court that they could pay all court expenses as well as the costs and expenses of the private prosecutor.”

But Unisa’s constitutional law expert Shadrack Gutto cautioned that it would be very difficult for opposition parties to bring a private prosecution without co-operation from the NPA.

“The Promotion of Access to Information Act is not foolproof, the NPA may find legally sound reasons not to hand some pieces of evidence over,” said Gutto.

Human Sciences Research Council’s senior research specialist Mcebisi Ndletyana described the NPA’s decision as “a double-edged sword”.

“It shows that there were interested parties outside the NPA who were intent on removing Zuma from the political scene and having him sent to jail,” said Ndletyana.

“It was always strange that Zuma was the only accused when (Andrew) Feinstein wrote a book saying many others were involved in alleged arms deal corruption.

“At the same time, the evidence that came up in the Schabir Shaik trial and the NPA investigations do show that Zuma may have been bribed.”

The NPA also has to face the fact that the public now knew for certain that it had been used all along by certain political interests, Ndletyana said.