

NPA warns of breaching separation of powers

The Gauteng High Court (Pretoria) order in the ‘spy tapes’ case had far-reaching implications for prosecutorial decision-making and for the rights of accused persons, lawyers for the NPA and President Jacob Zuma argued on Friday in their application to appeal the judgment. The case – brought by the DA – challenged the rationality in law of the 2009 decision to drop corruption charges against Zuma. When former acting prosecutions head Mokotedi Mpshe announced the decision, he said recordings of phone conversations between Scorpions head Leonard McCarthy and former prosecutions head Bulelani Ngcuka, showed that the timing of the service of the indictment on Zuma was manipulated to negatively affect Zuma’s political prospects at the ANC’s elective conference in Polokwane, says a [BDlive](#) report by Franny Rabkin. In April, a full Bench found that **the decision was not rational, saying that the doctrine of abuse of process was a matter for a court to determine, and that there was no rational connection between the need to protect the integrity of the NPA and the decision to discontinue the prosecution.** On Friday, the NPA’s counsel, Hilton Epstein SC, said the judgment had constrained the NPA’s power – given to it by the Constitution and the NPA Act – to decide whether to prosecute or not. It was a breach of the separation of powers to ascribe this discretionary power the courts, he said. Zuma’s counsel, Kemp J Kemp SC, added that the judgment affected the rights of accused people to make representations to the NPA so that it could reconsider its decision, as it constrained the NPA’s ability to make decisions based on the representations.