



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The National Director of Public Prosecutions v Sijoyi Robert Mdhlovu (Case no 194/2023) [2022] ZASCA 85 (03 June 2024)

Today, the Supreme Court of Appeal, per Matojane JA (Hughes and Goosen JJA and Dawood and Baartman AJJA) has overturned a High Court ruling that found the National Director of Public Prosecutions (NDPP) liable for malicious prosecution in a case brought by Mr. Sijoyi Robert Mdhlovu, a former prosecutor.

In 2017, Mr. Mdhlovu was charged with fraud and defeating the ends of justice for allegedly providing false information to the Department of Justice and Constitutional Development and an investigating officer regarding criminal cases he had withdrawn. He was later discharged, and subsequently sued the NDPP for malicious prosecution.

The High Court had ruled in favour of Mr. Mdhlovu, finding that the prosecution lacked reasonable and probable cause and was motivated by malice. However, the Supreme Court of Appeal determined that the High Court erred in its assessment of the evidence and application of the law.

The Supreme Court found that the Deputy Director of Public Prosecutions (DDPP) who decided to prosecute Mr. Mdhlovu had sufficient evidence at the time to establish reasonable and probable cause for the prosecution. The Court also held that the evidence did not support a finding that the DDPP acted with malice or intent to injure Mr. Mdhlovu.

The Supreme Court emphasized the importance of prosecutorial independence and discretion, stating that prosecutors should be able to pursue cases they believe have merit without undue fear of adverse consequences, provided they act rationally, honestly, and without improper motives.

The appeal was upheld, the High Court's order was set aside, and Mr. Mdhlovu's claim was dismissed with costs.