



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena (986/2023) [2025] ZASCA 23 (26 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, in which a matter, concerning an application for reconsideration under s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act), was struck from the roll and the applicant was ordered to pay the costs incurred by the respondent, in opposing the application.

During a protected strike in April 2016 at the Wonderfontein mine outside Middelburg, employees of Bidvest Protea Coin Security (the applicant) advanced upon striking workers and opened fire with rubber bullets. Mr Mabena (the respondent) was struck by a rubber bullet in his left eye, as a result of which he lost the sight of his eye. The Mpumalanga Division of the High Court, Middelburg (trial court) found that the applicant had failed to plead the defence of necessity, and held that the applicant was 100% liable for the damages that the respondent may prove, as well as his costs. The applicant, with leave to do so, appealed the judgment and order of the trial court to the full court of the trial court (the full court). The appeal was dismissed with costs, whereafter the applicant sought special leave from this Court to appeal the judgment and order of the full court. The application for special leave to appeal was dismissed with costs (the decision on petition). The applicant then brought an application in terms of s 17(2)(f) of the Act seeking from the President of this Court (the President) a referral of the decision on petition for reconsideration, and if necessary, variation.

The first question before the SCA was whether s 17(2)(f) of the Act, and the referral made to this Court by the President, requires this Court simply to reconsider the decision on petition, or whether it requires this Court first to decide whether there are exceptional circumstances that warrant the reconsideration of the decision on petition, and only if it so finds, then to reconsider the decision on petition.

The SCA identified two possible interpretations of s 17(2)(f) of the Act. The first is 'the exclusivity interpretation' where it is for the President alone to decide whether there are exceptional circumstances, and the second is the 'the jurisdictional fact interpretation' where it is ultimately for this Court, to which the matter is referred, to decide whether there are exceptional circumstances.

The SCA held that, given the hierarchical sequence of decision-making in s 17 of the Act, it would be a discordant institutional norm if s 17(2)(f) were to be interpreted to allow a single judge of this Court, albeit the Head of Court, to undo the finality of a decision taken by two (and sometimes three) judges of the same court. Exceptional circumstances, in s 17(2)(f), are referenced as an objective state of affairs that must exist as a predicate for the exercise of the power by the President. The SCA, employing the jurisdictional fact interpretation, found that if there are no exceptional circumstances, then that puts an end to the matter, and the Court need not consider whether the refusal to grant leave on petition was correctly decided, much less whether the judgment and order of the full court were correct.

The SCA, in deciding if there were exceptional circumstances, considered the applicant's complaint that it had not been treated fairly in the full court. The full court had found that the applicant was bound by its pleaded defence of sudden emergency, and could not rely on the defence of necessity. According to the applicant, this deprived it of its right to have its sole defence considered by the full court. This Court held that a fair reading of the judgment of the full court indicated that it did have regard to the evidence led at trial and that the full court concluded that it could find no error that the trial court had made as to the defence of necessity. This Court held thus that there was no unfairness of the kind attributed by the applicant to the full court and hence no exceptional circumstances existed. Therefore, the SCA held that the jurisdictional fact, that permitted of a reconsideration of the decision on petition, had not been established.

The SCA held that the decision on petition thus remained the final word on whether the applicant may appeal the judgment and order of the full court. As a result, this Court struck the matter from the roll and ordered the applicant to pay the costs incurred by the respondent in opposing the application for reconsideration.