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

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Director of Public Prosecutions, Gauteng Division v Thato Molefe and Another (417/2024) [2025] ZASCA 67 (26 May 2025)

Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it upheld the appellant's appeal against an order of the Gauteng Division of the High Court, Pretoria (the high court).

The issue for determination before the SCA was whether evidence obtained as a result of a defective search warrant should be excluded in terms of s 35(5) of the Constitution, which mandates exclusion if its admission would render the trial unfair or be detrimental to the administration of justice.

The respondents, Mr Thato Molefe and Mr Zenzile Ndaba, were charged with various counts under the Drugs and Drug Trafficking Act 140 of 1992, in the Regional Court, Vereeniging (the regional court). The main charge against them was that they operated a drug laboratory, manufacturing and supplying certain substances used in the manufacture of methaqualone, commonly known as mandrax. The charges stemmed from a police raid on a property in De Deur, Vereeniging, where drugs and drug-manufacturing equipment with an estimated street value of R26 million were discovered. The search was conducted under a search warrant that was later found to have a formal defect because it was directed to 'all police officials' as opposed to naming the individual police officials who would conduct the search; and it recorded an incorrect address, although the correct premises were identified using GPS.

The regional court found that it was bound by this Court's precedent in, *S v Malherbe*, that once the search warrant was defective, it had no option but to rule the evidence inadmissible. This was confirmed by a full bench of the high court. Dissatisfied, the Director of Public Prosecutions (the DPP) appealed to the SCA in terms of s 311 of the Criminal Procedure Act 51 of 1977 (the CPA), which affords the DPP an automatic right of appeal on a question of law.

The SCA clarified that the lower courts misinterpreted *S v Malherbe* as requiring the automatic exclusion of evidence obtained through defective warrants. This was with specific reference to the facts in that case, rather than a general statement of the law.

The SCA found that the defects were technical and did not reflect a flagrant or deliberate disregard for constitutional rights. The arresting warrant officer acted in good faith, utilising a standard pro forma

warrant and correctly identified the premises via GPS. The admission of the evidence would not render the trial unfair or harm the administration of justice. The evidence was real (tangible objects), highly probative and obtained without coercion. The arresting warrant officer obtained judicial approval for the search, demonstrating a genuine respect for due process. The arresting warrant officer would, in any event, have been well within his rights to conduct the search without a warrant in terms of s 22 of the CPA.

As a result, the SCA made an order upholding the appellant's appeal, setting aside the order of the full bench and replacing it with an order that the material seized under the search warrant was admissible; setting aside the acquittals; and remitting the matter back to the regional court to continue with the trial.

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