THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The State v Thabethe and Others (Case no 839/2023) [2025] ZASCA 88 (12 June 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, granting the State leave to appeal against an order of the Free State Division of the High Court, Bloemfontein (the High Court), which refused to reserve certain questions of law in terms of section 319(1) of the Criminal Procedure Act 51 of 1977 (CPA), after it found the respondents not guilty on charges of fraud and money laundering.

The first, second and third respondents (Mr Thabethe, Ms Moorosi and Ms Dhlamini) were officials of the Free State Department of Agriculture and Rural Development (the Department). The State alleged that on 6 October 2011, they engineered the award of a contract to the fifth respondent (Nulane), worth nearly R25 million (R24 984 240), without following prescribed tender procedures; and fraudulently prepared a request to deviate from those procedures. The deviation request was based solely on a letter dated 3 October 2011, from Worlds Window Impex India PvT Ltd, a company incorporated in India which trades in scrap metal. In that letter, Worlds Window stated that it intended to participate as a strategic partner in the Department's Mohoma Mobung Project, aimed at generating income through farming, manufacturing and expanding infrastructure in the rural areas of the province. In terms of the contract awarded to Nulane, it undertook to provide the Department with a feasibility study for the Project. It was not disputed that Nulane immediately outsourced the feasibility study to Deloitte at a cost of some R1.5 million, rendered no services under the contract and was paid R24 984 240. The State alleged that the bulk of this money (R19 million) was laundered by Nulane and its director, Mr Sharma, the fourth respondent, the seventh respondent (Islandsite), and the eighth respondent (Ms Ragavan) to Gateway Ltd, a company in the UAE. The money was allegedly laundered through a cash focus system at Absa bank, a facility consisting of various bank accounts, including those of Tegeta, Oakbay, Pragat and Islandsite, and controlled by Mr Atul Gupta. Gateway received the R19 million on the pretext that it was payment by Nulane for services rendered in terms of a contract between Gateway and Nulane (the Gateway contract).

The first and second respondents were charged with a contravention of section 86(1) of the Public Finance Management Act 1 of 1999 (PFMA), in that they committed the Department to a contract of nearly R25 million without following the tender procedures and incurring fruitless and wasteful expenditure (Count 1). On Count 2 all respondents were charged with fraud. The State alleged that they carried out a common purpose to defraud the Department out of R24 984 240 by intentionally misrepresenting that the Department had received the Worlds Window letter; that the deviation request was bona fide; that Worlds Window genuinely intended to participate as a strategic partner in the Project; and that the cost of the feasibility study was justified. Count 3 charged Nulane, Mr Sharma, Islandsite and Ms Ragavan with money laundering. The State alleged that between November 2011 and July 2012, these respondents, acting in common purpose, laundered R19 070 934 – the proceeds of the fraud on Count 2 – to Gateway in the UAE, in contravention of the Prevention of Organised Crime Act 121 of 1998 (POCA). Count 4 charged these respondents with fraud, in that they, acting in common purpose, misrepresented to the Bank of Baroda, the Reserve Bank or the National Treasury that the sum of R19 070 934 transferred to Gateway was due and payable as a result of a legitimate transaction.

On Count 1, the High Court found the second respondent, the accounting officer of the Department, not guilty of contravening section 86(1) of the PFMA, without considering its provisions or providing reasons for its decision. She was also found not guilty of fraud on Count 2. The High Court found that there was 'not an iota of evidence' against her; and that the deviation request – which the second respondent admitted she had signed – 'flew in [through] the window'.

The remaining respondents were found not guilty on all the charges and discharged at the close of the State case. The High Court held that State failed to prove a case against them and that a conviction was not possible except if they incriminated themselves. The court made a finding that the State case was 'stillborn' solely on the grounds that the State did not adduce evidence to authenticate disputed documents; the investigators were inept; and the evidence and documents were handled in a lackadaisical manner.

On Count 2, the High Court rejected the evidence of a witness under section 204 of the CPA and declined to grant him immunity from prosecution. It did so because the witness refused to admit to being part of the fraud. It held that the State failed to prove that the respondents carried out a common purpose, because there was no evidence of a prior agreement and the indictment did not allege common purpose.

On Count 3, the High Court found that the found that the State 'failed to pass the barest of threshold', and the question as to who facilitated almost R25 million of taxpayers' money leaving the fiscus, and why, remained unanswered. It held that the concessions by the State witnesses concerning the flow of funds which the Department paid to Nulane – which are not stated in the judgment – 'put the death knell on the state's case'.

On Count 4 the High Court found that there was no evidence that the relevant respondents acted in concert, and that the State failed to prove a misrepresentation to the Bank of Baroda, the Reserve Bank or the National Treasury.

The State can only appeal on a question of law. Therefore, it applied to the SCA to reserve questions of law under section 319(1) of the CPA, which included the following: whether the High Court misinterpreted and misapplied the doctrine of common purpose; it admitted certain documents into evidence but later ruled them inadmissible; it misapplied the best evidence rule; it misinterpreted and misapplied section 204 of the CPA; and it misapplied section 174 of the CPA and ought not to have discharged the respondents at the close of the State case.

The SCA found that the High Court's finding that the State case was 'stillborn' solely because of the ineptitude of the investigators and the lackadaisical way in which evidence and disputed documents were handled – which has no foundation in the evidence – was disturbing. It held that the inference was inescapable – and the judgment itself shows – that the Judge had closed her mind to the evidence adduced by the State. This was fundamental to the decision to acquit the respondents.

The SCA reserved the questions of law in favour of the State. It held that the High Court had misinterpreted the doctrine of common purpose and that prima facie, the State had established the following facts. The Department did not publicly call for a feasibility study for the Project. It did not receive the Worlds Window letter; it was produced by the third respondent. Without the deviation request, no contract could have been awarded to Nulane. That request could never have been approved without the co-operation of the first, second and third respondents, by virtue of their positions in the Department. There is accordingly direct evidence that Worlds Window, Nulane, the fourth and the sixth respondent (who instructed Deloitte) were involved in the fraud on the Department referred to in Count 2; and that the proceeds, derived from that fraud, were laundered almost immediately after each payment by the Department to Nulane, in which Islandsite and Ms Ragavan played a central role. The participation of each of the respondents was an essential link in the chain of criminal conduct in carrying out the scheme, designed to defraud the Department out of almost R25 million, and launder the proceeds. Thus, prima facie, the State established common purpose based on a prior agreement, which may be inferred from the facts; or active association and participation by the respondents in a common criminal design, with the intention of committing the offences alleged in the indictment. The High Court's application of the wrong legal standard regarding common purpose, the SCA held, resulted in the acquittal of all the respondents on Count 2; the acquittal of the fourth, fifth, seventh and eighth respondents on Counts 3 and 4; and an unfair trial.

The remaining questions were also reserved in favour of the State. The SCA found that the High Court's ruling that an original invoice and a payment advice proving a payment to Nulane was admissible in evidence, but later ruling them inadmissible, was inexplicable and irrational. And this, when the respondents did not dispute that Nulane had received R24 984 240 from the Department. The SCA held that the court's finding that copies of documents, such as the contract between Nulane and the Department, the deviation request and a report by Deloitte, were inadmissible, was also irrational: these documents were proved by witnesses who had identified them as true copies. The SCA concluded that the High Court's finding that the State case was stillborn, was fatal to the admission of documents in evidence.

The SCA held that the High Court had misconstrued and misapplied section 204 of the CPA. It does not require a person who turns State witness to admit to the relevant crime before he can be indemnified against prosecution. There was no basis to reject the evidence of the section 204 witness. He had drafted the deviation request on the instruction of his supervisor, the third respondent. This was not disputed. Moreover, the first, second and third respondents admitted signing the request: it certainly had not 'flown in through the window'. The SCA concluded that prima facie, the respondents' participation in a carefully planned scheme to defraud the department and launder the proceeds, cried out for an explanation from them; that their acquittal on Count 2, was baffling; and that the evidence showed that the second respondent had contravened section 86(1) of the PFMA.

Concerning Count 3, the SCA found that the State had prima facie established the flow of funds from the Department to Nulane's account, from which they were rapidly moved from one account to another through the cash focus system and layers of artificial transactions set out in Count 3. This *modus operandi*, in which Islandsite and Ms Ragavan played a pivotal role, was

designed to distance the funds from their original source. The SCA held that prima facie, this was a typical case of money laundering as contemplated in the POCA. The movement of these funds demanded an explanation from Ms Ragavan, who on her own version, is the financial manager of Islandsite, and who raised no query regarding the rapid movement of funds to and from Islandsite's account. As regards Count 4, the SCA found that the High Court failed to apply the elements of fraud, and that prima facie, the fourth, fifth, seventh and eighth respondents knew or must have known that Gateway had rendered no services to Nulane.

The SCA concluded that the High Court made numerous errors of law, where it was prima facie established that scarce public funds were unlawfully extracted from the Department and channelled to the UAE, by fraud and the misuse of power. This resulted in the acquittal of the respondents. The SCA stated that the trial can be summed up as follows: This was a failure of justice.

In the result, the SCA reserved most of the questions of law in favour of the State. It set aside the order of the High Court in terms of which it acquitted the respondents and declined to grant the State witness indemnity. The SCA made an order that the respondents may be retried for the same offences, before a different Judge.

A minority judgment by a member of the Court holds that there was no evidence on which Ms Ragavan could have been convicted, and that she was correctly discharged at the close of the State case. The main reasons for this conclusion are that the State failed to prove common purpose on the part of Ms Ragavan; that she was merely an employee of Islandsite, which, it is said, was the 'puppet master'; and that '[t]here is no evidence that she transacted without an instruction from Mr Atul Gupta', a director of Islandsite.

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