



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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Ditlhakanyane v The State (775/2023) [2025] ZASCA 90 (12 June 2025)

Today, the Supreme Court of Appeal (SCA) handed down judgment in which it partially upheld the appellant's appeal. The order of the full court was set aside and substituted as follows: The conviction on count 1, for contravening section 2(1)(f) of the Prevention of Organised Crime Act 121 of 1998 (POCA), and the sentence imposed in respect of this count, were set aside. However, the conviction on count 2, for contravening section 2(1)(e) of POCA, was confirmed, and the accused was sentenced to 30 (thirty) years' imprisonment in respect of that count.

This judgment by the SCA has finally provided clarity and legal certainty on whether convictions under both section 2(1)(e) and section 2(1)(f) of POCA on the same set of facts amount to a duplication of convictions. The SCA answered this question in the affirmative.

At the outset of the proceedings in the trial court, the State alleged that Mr Ditlhakanyane was a member of a criminal enterprise that targeted the South African Post Bank. Evidence presented during the trial revealed that Mr Ditlhakanyane both managed and actively participated in the enterprise, which preyed on account holders of the South African Post Office. He played a pivotal role in sourcing information related to the accounts of targeted individuals and determining the funds available in those accounts. Furthermore, he was the central figure responsible for forging identity documents and passports used in the fraudulent scheme. Along with his former co-accused, he also procured false bank cards. These forged documents were then presented at various Post Office branches, where, assisted by complicit tellers and Post Bank employees, funds were unlawfully withdrawn from the compromised accounts.

On 17 June 2015, Mr Ditlhakanyane was sentenced to an effective term of 50 years' imprisonment. He subsequently appealed both the convictions and sentences imposed. On 24

October 2022, the appeal was heard by the full court, which dismissed the appeal against the convictions but reduced his sentence from 50 to 40 years' imprisonment.

The SCA found that neither the trial court nor the full court addressed the issue of duplication of convictions. Moreover, it was evident from the trial court's judgment that the evidence relied upon to conclude Mr Ditlhakanyane's guilt in managing and participating in the criminal enterprise failed to distinguish between the evidence supporting the conviction on count 1 and that on count 2. The trial court used the terms "management" and "participation" interchangeably, treating them as synonyms. He was essentially convicted of both section 2(1)(e) and (f) on the same evidence. Consequently, the SCA found that a conviction on both sections 2(1)(e) and (f) offends against the duplication of convictions rule.

The SCA further held that Mr Ditlhakanyane's active involvement in the conduct of the enterprise brought him squarely within section 2(1)(e): the manager who is involved actively in the conduct of the enterprise through a pattern of racketeering activity. Therefore, it followed that the appeal against the conviction on count 1, which was the contravention of section 2(1)(f) ought to succeed.

Since the SCA found that Mr Ditlhakanyane should have been convicted of only one count, namely section 2(1)(e) of POCA, the 30-year sentence imposed in respect of count 1 automatically fell away. The SCA then had to consider whether the sentence imposed for count 2—20 years' imprisonment, of which 10 years were ordered to run concurrently with the 30 years from count 1—was appropriate. Additionally, the SCA needed to determine whether it could increase the sentence if it concluded that 20 years' imprisonment was insufficient given the circumstances.

In arriving at its conclusion on sentence, the SCA considered the prescribed penalty for the offence under section 2(1)(e), which provides for a fine of up to R1,000 million or imprisonment for a period up to life upon conviction. The SCA noted that it was difficult to understand why the trial court imposed a sentence of only 20 years' imprisonment when the legislature prescribes a minimum sentence. Furthermore, the SCA observed that the trial court deviated from this prescribed minimum sentence without giving any reasons for doing so.

The SCA ultimately found that if this Court does not intervene, the administration of justice will be brought into disrepute. The sentence imposed was contrary to the objective of POCA, which is to appropriately punish those involved in organised economic crimes within the framework of the prescribed sentences set by the legislature. A sentence that properly reflects the seriousness of the offence, takes into account the personal circumstances of the accused, and addresses the interests of society must necessarily exceed 20 years' imprisonment.

Accordingly, the SCA found that the conviction on count 1, for contravening section 2(1)(f) of the Prevention of Organised Crime Act 121 of 1998 (POCA), and the sentence imposed on that count, are to be set aside. The conviction on count 2, for contravening section 2(1)(e) of POCA, is to be confirmed, and Mr Ditlhakanyane is to be sentenced to 30 (thirty) years' imprisonment, antedated to 17 June 2015, in respect of count 2.