



## 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  
**Date:** 17 April 2025  
**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.***

*Van Veen v Director of Public Prosecutions and Others (104/2024) [2025] ZASCA 46 (17 April 2025)*

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed an appeal against the judgment of the Western Cape Division of the High Court, Cape Town (the high court).

The appellant, an investment manager and a director of Evercrest Capital (Pty) Ltd, a management company of a hedge fund, the Evercrest Aggressive Fund (the EA Fund), was investigated by the Financial Services Board (FSB) in 2007 for the loss or potential loss (of approximately R146 million) that was suffered by the EA Fund. After the finalisation of the FSB investigation, followed an extracurial delay of approximately 11 years before a variety of charges, based on the investigation by the FSB, were preferred against the appellant in the Specialised Commercial Crimes Court (SCCC) in August 2019. He first appeared in the SCCC in September 2019. In March 2021, the appellant was diagnosed with a brain tumour known as a pituitary adenoma.

While the criminal case was pending before the SCCC, the appellant, in February 2022, approached the high court and sought a permanent stay of his prosecution, relying on a confidential report by the appellant's psychiatrist, dated January 2022. According to this report the appellant sustained permanent damage to his brain resulting from the brain tumour, which caused long-term disabling deficits. The report maintained that whilst the appellant could understand the charges against him, he was unable to recall relevant information from 2007 and was unable to convey it logically so as to formulate a proper defence and challenge evidence. In the high court the appellant submitted that the pre-trial delay caused him irreparable trial-related prejudice and if he were to stand trial in those circumstances, he would not receive a fair trial. The high court dismissed the application but granted leave to appeal to this Court.

The central questions for determination before the SCA were: (a) whether there was an infringement of the appellant's right to a fair trial in terms of s 35 of the Constitution; (b) whether the processes outlined in ss 77 and 79 of the Criminal Procedure Act 51 of 1977 (CPA) constitute an adequate remedy to deal with the appellant's medical condition; and (c) whether a permanent stay of prosecution can be granted.

The SCA held that the delay had no link whatsoever to the onset of the appellant's illness. This Court further held that a permanent stay of prosecution is an exceptional remedy, which may only be granted where the delay is egregious and has resulted in irreparable trial-related prejudice. The SCA found that there were no facts to support the appellant's alleged trial-related prejudice because of the delay and therefore held that the high court correctly found that despite the unreasonable delay in instituting the prosecution, the appellant failed to establish that such delay caused him material trial-related prejudice.

The SCA held that the processes in ss 77 and 79 of the CPA, apply equally to everyone who is an accused, and where there is a legal basis for their invocation that is consistent with the interests of justice. If an enquiry is directed in terms of s 77(1) of the CPA, a report must include a finding as to whether the accused is capable of understanding the proceedings in question so as to make a proper defence. The SCA confirmed the finding in the high court that the appropriate remedy for the appellant does not lie in civil proceedings (in the form of a stay of prosecution) but in ss 77 and 79 of the CPA.

As a result, the SCA dismissed the appeal without making any costs orders against the appellant.