



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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*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*

South African Board for Sheriffs v Thaka Frederick Seboka and Others (293/2024) [2026]
ZASCA 109 (20 August 2026)

Today, the Supreme Court of Appeal (SCA), by a majority, upheld in part an appeal by the South African Board for Sheriffs (the Board) against a judgment of the Western Cape Division of the High Court, Cape Town (the full court). Each party was ordered to pay its own costs.

The first and second respondents, Mr Thaka Frederick Seboka (Mr Seboka) and Mr Stephanus Johannes van Wyk (Mr van Wyk), had served as sheriffs in their respective areas of jurisdiction for many years. After reaching the statutory retirement age of 65, they were reappointed from time to time as acting sheriffs by the Deputy Minister of Justice and Constitutional Development (the Deputy Minister). When the Deputy Minister proposed to appoint them for a further period, the Board, which had adopted a policy not to recommend the reappointment of retired sheriffs, declined to indicate whether it was prepared to issue them with fidelity fund certificates.

Mr Seboka and Mr van Wyk brought two urgent applications in the Western Cape Division of the High Court, Cape Town (the high court). In the first, Allie J declared the Board's failure to

indicate whether it was prepared to issue fidelity fund certificates unlawful and directed the Board to confirm in writing that it agreed in principle to issue the certificates should the Deputy Minister appoint them. In the second application, after the Deputy Minister had reappointed them, Van Zyl AJ declared that they were entitled to perform the functions of acting sheriffs despite the Board's failure to issue fidelity fund certificates and directed the Board to issue the certificates.

The Board appealed against both orders to the full court. By the time the appeals were heard, Mr Seboka and Mr van Wyk had vacated their positions as acting sheriffs and the matters had become moot between the parties. The majority of the full court declined to determine the merits and dismissed the appeals on the basis of mootness. The Board thereafter appealed to the SCA with special leave.

The majority (Chili AJA with Dambuza and Kgoele JJA and Steyn AJA concurring) held that, despite the mootness of the dispute between the parties, it was necessary to determine the question whether an acting sheriff may perform the functions of a sheriff without a fidelity fund certificate. Conflicting judgments had been given by different divisions of the High Court on the proper interpretation of the Sheriffs Act 90 of 1986 (the Act), and the issue remained of public importance and was likely to affect the future functioning of the Board and acting sheriffs.

In relation to the order of Allie J, the majority held that s 5(1B)(a) of the Act requires the Minister, before appointing an acting sheriff, to obtain written confirmation from the Board that it is prepared to issue a fidelity fund certificate to the proposed appointee. The appointment of an acting sheriff is therefore a joint process involving the Minister and the Board, and cannot be finalised if the Board does not perform its statutory function. The Board's failure simply to make a decision and communicate it to the Deputy Minister was unlawful and reviewable. Allie J was accordingly correct to intervene. The appeal against her order therefore failed.

In relation to the order of Van Zyl AJ, the majority held, in agreement with Kathree-Setiloane JA, that an acting sheriff appointed under s 5 of the Act is required to hold a fidelity fund certificate in order to perform the functions of a sheriff. Although s 30(1)(c) refers to an acting sheriff holding a fidelity fund certificate 'or' having paid the prescribed contribution to the Board, the provision had to be interpreted contextually and purposively. Acting sheriffs

perform the same functions as permanent sheriffs and expose members of the public and the Board to the same risks. Accordingly, an acting sheriff who has merely paid the prescribed contribution may not perform the functions of a sheriff without holding a fidelity fund certificate. The SCA held that the requirement of a fidelity fund certificate serves to protect the public and the Board against financial loss arising from the theft or misappropriation of money or property entrusted to a sheriff. An application for such a certificate must be considered by the Board, which is required to determine whether the sheriff or acting sheriff is suitable to hold one.

Accordingly, the SCA held that Van Zyl AJ had erred in concluding that an acting sheriff who had paid the prescribed contribution could perform the functions of a sheriff without holding a Fidelity Fund Certificate. The appeal against that order was therefore upheld.

Kathree-Setiloane JA dissented in part. She agreed with the majority that the appeal against Van Zyl AJ's order should succeed and that an acting sheriff may not perform the functions of a sheriff without a fidelity fund certificate. She differed, however, on the appeal against Allie J's order. In her view, although the Board's failure to make a decision was unlawful, the court could not compel the Board to confirm that it agreed in principle to issue fidelity fund certificates, as the statutory power to decide whether it was prepared to issue such certificates vested in the Board. She would therefore also have upheld the appeal against Allie J's orders and substituted it with an order directing the Board merely to make and communicate its decision.

The majority accordingly upheld the appeal in part. The full court's order was set aside. The appeal against Allie J's order was dismissed with costs, while the appeal against Van Zyl AJ's order was upheld and her order was replaced with an order dismissing the application with costs. Each party was ordered to pay its own costs in the SCA.

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