THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Ndlovu v The State (1256/2023) [2026] ZASCA 147 (30 October 2026)

Today, the Supreme Court of Appeal (SCA) handed down a judgment confirming an earlier order of the SCA that dismissed an application for special leave to appeal.

The applicant was an accused person before the Regional Court in the Regional Division of Gauteng, Johannesburg (the regional court) on a charge of murder. He was found guilty as charged and sentenced to 15 years' imprisonment. Aggrieved by this conviction and sentence, he appealed to the Gauteng Division of the High Court, Johannesburg (the full bench). The full bench dismissed his appeal. The applicant thereafter sought special leave to appeal to this Court, on petition, which was refused. Subsequently, an application for reconsideration was brought in terms of s17(2*)(f)* of the Superior Courts Act. The main issue that arose, was whether there were certain circumstances present that would warrant the SCA reconsidering the decision refusing the applicant special leave to appeal. To establish whether such circumstances were present, the merits were considered.

The majority of the SCA, per Mocumie JA (Norman JA concurring) formulated the applicable test with reference to *RAF v Lewis*. While the amendment to s 17(2*)(f),* which, according to the majority, materially altered the threshold for reconsideration of a refusal of special leave to appeal, came into operation on 3 April 2024, this applicant approached the President of the SCA four months before the amendment came into operation and therefore falls under the previous dispensation. The standard of 'exceptional circumstances' was therefore still applicable. The applicant, according to the majority, had to demonstrate to the court that, looking at all the facts holistically, there are exceptionally high prospects that this Court can find otherwise than what the two judges (rejection the application for special leave to appeal) did. The applicant's case was based on issues with how the full bench and regional court dealt with causation, *novus actus interveniens*, as well as common purpose and sentence. The SCA drew from the oral evidence presented by the expert witness in the regional court, on all three these grounds the applicant has simply rehashed the merits of the case and repeated the previous complaints, all of which were considered and dismissed. The SCA held that both the regional court and the full bench addressed the issues extensively and emphasised that the powers of an appellate court to interfere with the sentence of a lower court are circumscribed. For these reasons, the majority concluded that the applicant has not met the threshold for reconsideration under s 17(2)*(f)*. Based on *JM v Masureik* and *Former Way Trade v Bright Idea Projects*, the majority formulated the order to effectively confirm the order of the two judges dismissing the application for special leave to appeal.

The minority of the SCA, per Keightley JA, while agreeing with the majority that the applicants failed to meet the threshold of s 17(2*)(f)* of the Superior Courts Act, disagreed firstly with the description of the test for relief under the amended s 17(2*)(f),* and secondly with the formulation of the order in the majority judgment. The minority showed that the claim that the 2023 amendment to s 17(2)*(f)* introduced a materially different test to that under the previous formulation, was contrary to the jurisprudence of the SCA, which holds that in substance, there is no change in the test to be applied. Furthermore, the minority expressed the requirements of s 17(2*)(f)* as a threshold requirement to establish that the SCA has jurisdiction to reconsider the refusal of special leave. Because there were no 'exceptional circumstances' the threshold question, which is a jurisdictional requirement, was not met. The minority emphasised that the matter was therefore not properly before the Court for want of jurisdiction. The appropriate order, according to the minority, is therefore to strike the matter from the roll.

As a result, the SCA confirmed the order of the two judges dismissing the application for special leave to appeal.