



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 10 March 2026

Status: Immediate

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Luphondo v The State (123/2024) [2026] ZASCA 24 (10 March 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an application by the applicant, Mr Matric Luphondo, for the reconsideration of an order of two judges of the SCA refusing his petition for leave to appeal against the decision of the Gauteng Division of the High Court, Pretoria (the High Court). The High Court had declined to hear his application for leave to appeal against its dismissal of his special plea. His petition to the SCA was dismissed, but he successfully petitioned the President of the Court for reconsideration of that order in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the SC Act). The President referred the application for oral hearing in terms of s 17(2)(d) of the SC Act.

The applicant is the former Acting Director of Public Prosecutions of the National Prosecution Authority in Mpumalanga. He is currently facing seven counts of corruption and three counts of defeating or obstructing the ends of justice in the High Court alongside a co-accused, Mr Masange. According to the State's summary of the substantial facts in the indictment, Mr Masange, was an accused in a case in which he faced a fraud charge and a charge of being an illegal immigrant in the country. It is alleged that the applicant, Mr Masange and the investigating officer in that case (who has since died) acted with a common purpose to bribe the prosecutor to help Mr Masange avoid prosecution.

After he had pleaded not guilty to the charges, he brought a special plea in terms of s 106(1)(h) of the Criminal Procedure Act 51 of 1977 that the prosecutors had no title to prosecute him. In support of the special plea, the applicant relied on the Prosecution Policy Directives, issued by the National Director of Public Prosecutions on 1 November 1999 (the Prosecution Directives). Those directives require, among others, that the prosecution of certain categories of people, which include prosecutors, magistrates and judges, should not proceed without the written authorisation of the Director of Public Prosecutions (the DPP). It was common cause that there was no such authorisation. The applicant argued that for that reason, he should be acquitted of all the charges.

The High Court dismissed the special plea on the basis that, although there was no written authorisation, the DPP, who testified in the special plea, was aware that the applicant was a prosecutor and the charges he faced. In addition, he approved of the prosecution. The DPP had also been briefed by the prosecutor involved in the case, and by a Brigadier from the Directorate for Priority Crime Investigations. Furthermore, the DPP had authorised an instruction to transfer the applicant's case from the magistrates' court to the high court, which instruction contained a detailed exposition of the charges the applicant faced and a summary of the facts underpinning them.

Before the SCA, the first question was whether the applicant satisfied the test for a reconsideration in terms of s 17(2)(f), which requires demonstrating exceptional circumstances in the sense that a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute if the order refusing the petition is not reconsidered. The SCA noted the Court's divergent judgments on this issue as to who decides whether exceptional circumstances exist. Some held that the court to which the matter is referred determines the issue. This category includes *Motsoeneng v SABC (Motsoeneng)*, *Bidvest Protea Coin Security v Mabena (Bidvest)* and the majority judgments in *Lorenzi v S (Lorenzi)*; as well as *Schoeman v Director of Public Prosecutions (Schoeman)*. Others held that the power resides with the President. This category includes the majority judgments in *Lorenzi*, *Schoeman*, and the unanimous judgments in *4 Seasons Logistics v Kgotse (4 Seasons)* *Matsi v The South African Legal Practice Council (Gauteng Province)*, and *Lutzkie v Commissioner for the South African Revenue Service*. *4 Seasons* is the first unanimous Court that declined to follow *Motsoeneng* and *Bidvest*. It found them to be 'clearly wrong' and 'overruled' them.

The SCA, per Makgoka JA (Kathree-Setiloane, Koen, Coppin JJA and Dawood AJA concurring), considered the principle of *stare decisis* and concluded that a judgment of any properly constituted bench of the Court is binding authority, irrespective of the number of judges on the bench. The SCA considered, however, instances when there is a disagreement between a smaller bench and a larger one. After a survey of comparative foreign law, the SCA concluded that, in that event, the judgment of the larger panel is the binding authority. Thus, *4 Seasons*, being a judgment of a three-panel bench, was bound by *Motsoeneng* and *Bidvest*, the judgments of five-panel benches. The SCA concluded that those judgments could only be authoritatively overruled by either the Constitutional Court, an equally constituted five-panel bench, or a larger panel of the SCA. Until that occurs, they remained binding authority in this Court.

On that footing, the SCA considered whether exceptional circumstances existed to warrant a reconsideration of the order dismissing the petition. After an analysis of the facts against the judgment of the High Court, it concluded that the applicant had not established the possibility of either a grave injustice or the administration of justice being brought into disrepute if the order is not reconsidered. Accordingly, the SCA dismissed the application for reconsideration, with each party to pay its own costs.

ENDS