



**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:** 23 June 2026

**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*

*Ester Lungu and Others v Government of the Republic of Zambia and Others (089/2026)*  
[2026] ZASCA 87 (23 June 2026)

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Today the Supreme Court of Appeal (SCA) upheld an appeal by the family of the former Republic of Zambia, President Edgar Lungu (the late President Lungu), against an order of the Gauteng Division of the High Court, Pretoria, (high court) which authorised the repatriation of the late President Lungu's remains to Zambia for a state funeral and burial.

The late President Lungu passed away in South Africa on 5 June 2025 while receiving medical treatment. Following his death, a dispute arose between his family and the Government of Zambia (the Zambian Government) regarding the arrangements for his funeral and burial. The Zambian Government sought the repatriation of his remains to Zambia for a state funeral. The family opposed the application, relying on the late President Lungu's stated wishes and contending that no binding agreement had been reached with the Zambian Government regarding the proposed funeral arrangements.

The high court found in favour of the Zambian Government, holding that an agreement had been concluded between the parties and that the Zambian Government was entitled to proceed with the repatriation and state funeral. The family appealed to the SCA.

The central issue before the SCA was whether the Zambian Government had established a legal right to override the family's decision regarding the burial of the late President Lungu and whether a binding agreement existed between the parties.

The majority judgment held that the Zambian Government had failed to establish a legal right to override the family's decision regarding the burial of the late President Lungu. This SCA found that the evidence relied upon by the Zambian Government reflected ongoing negotiations rather than a concluded agreement. Applying the *Plascon-Evans* rule, the majority accepted the family's version that no final agreement had been reached.

The majority further held that, in the absence of a clear legal basis, the constitutional rights of the family to dignity, privacy and family autonomy could not be overridden by the interests asserted by the Zambian Government. The SCA also found that the legislation relied upon by the Zambian Government did not confer a right to determine the burial arrangements of a former president against the wishes of the family.

A minority judgment concluded that the evidence demonstrated the existence of a binding agreement between the parties concerning the repatriation of the late President Lungu's remains, the state funeral and the funeral programme where the current President Hakainde Hichilema was to preside over the state funeral. In the minority's view, the Zambian Government had implemented the agreement in several ways including the preparation of the late President's resting place. Based on all those factors, according to the minority view, the family is bound by that agreement, and the Zambian Government is entitled to enforce it. The minority would therefore have dismissed the appeal with no order as to costs.

The SCA accordingly upheld the appeal with costs, including the costs of two counsel where employed, set aside the order of the high court and replaced it with an order dismissing the Zambian Government's application.

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