**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:** 3 July 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***

*MEC for Economic Development, Environment, Agriculture and Rural Development (Gauteng) and Another v Phumelela Gaming and Leisure Limited and Another* (42/2025) [2026] ZASCA 97 (3 July 2026)

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Today, the Supreme Court of Appeal (SCA) dismissed an application for condonation and reinstatement of the appeal and struck the matter off the roll.

This appeal is with the leave of this Court, having been granted on 27 November 2024. It is limited to paragraphs 2 to 9 of the order of the Gauteng Division of the High Court, Johannesburg (the high court).

Phumelela Gaming and Leisure Limited (Phumelela), the first respondent, is an incorporated public company which is under business rescue. It was the only company in Gauteng that held the totalisator and race meeting licence for more than two decades. This totaliser licence is issued by the second appellant, the Gauteng Gambling Board (the Gambling Board). This meant that Phumelela, as a totalisator with its totaliser licence, monopolised horse racing in Gauteng and all wagers made within that industry. This lasted until 1 December 2021.

The reign of Phumelela came to an end when the first appellant, the Member of the Executive Council for Economic Development, Environment, Agriculture and Rural Development, Gauteng (the MEC), amended the Gauteng Gambling Regulations on 1 April 2019, by amending Regulation 276. The second respondent, 4Racing (Pty) Ltd (4Racing), was appointed as the totalisator in Phumelela's stead, with the relevant totaliser licence and race meeting licence being issued.

On 6 May 2024, Wilson J presided over Phumelela's review application in the high court. The high court also approved 4Racing's motion to intervene, ruling that Phumelela's requested relief clearly impacts 4Racing's rights and legal interests under the Gambling Regulations. The high court ruled that the amendment to Regulation 276 was unlawful administrative action that required it to be reviewed and set aside. The high court observed that the amendment deprived the totalisator licensee of a regulatory subsidy to which they were otherwise entitled. Additionally, the high court noted that the amendment had a direct and external legal effect on the licensee by removing a levy-funded subsidy, thereby clearly harming the licensee's rights.

The high court found the amendment to be procedurally irrational, given the complexity of the issue, Phumelela was not directly engaged and the MEC was expected to do more than simply accept information through a notice-and-comment process. Critically, the high court held that Regulation 273 of the Gambling Regulations, which was not amended by the MEC, specifically provides that the levy is payable for the benefit of the holder of a totalisator licence. Accordingly, the high court ordered payment to Phumelela and 4Racing of the total amount of the levy payable in terms of Regulation 276 in the form it took prior to the amendment for the periods from 1 April 2019 to 30 November 2021 and from 1 December 2021 to 30 May 2024, respectively, with interest.

In dealing with the reinstatement and condonation, this Court found that on 6 June 2025, the Registrar of this Court pointed out to the non-compliance by the appellants with rule 8(9)*(e)* of the Supreme Court of Appeal, namely that the appellants failed to file those parts of the record agreed upon of the proceedings of the court a quo. As the records were not properly before this Court, the Registrar took the view that the appeal had lapsed.

The appellants sought to justify that their financial situation both caused and delayed the prosecution of their appeal. However this Court found that it was unclear from the documents whether it was the MEC, the Gambling Board, or both that had no funds. Considering that there is an admission that the financial obstacle was resolved when the new budget emerged at the end of February 2025, the funding issue could not have been central while the record was being prepared and filed, especially since the appeal was prosecuted after February 2025.

This Court also found that the explanation advanced by the appellants was not acceptable and did not set out succinctly the essential information to enable a court to make an informed decision to grant condonation, as is required and alluded to by the case law. Furthermore, that the information or reason advanced by the appellant was porous and lacking, to say the least and that there is insufficient information for a court to examine how to exercise its discretion in granting condonation.

In dealing with the appellants' non-compliance with the rules governing the timeous filing of the record, it emerged that there was, in fact, a flagrant breach of the rules on the appellants' part. A further breach of the rules ensued when the heads of argument were also filed out of time, without explanation. This, in itself, and the appellants' egregious conduct, warranted the refusal of any indulgence or condonation and weighed against the reinstatement of the appeal.

The SCA held that there is absolutely no satisfactory and acceptable explanation for the flagrant breaches of the rules. In these circumstances, it was unnecessary to assess the prospects of success, since the cumulative effect of the factors already mentioned was fatal to the success of the application for condonation.

The SCA accordingly dismissed the application for condonation and reinstatement of the appeal with costs, including the costs of two counsel where so employed.

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