



**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 22 September 2021

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Kouwenhoven v Minister of Police and Others (888/2020) [2021] ZASCA 119 (22 September 2021) and *Kouwenhoven v Director of Public Prosecutions, Western Cape and Others* (288/2021) [2021] ZASCA 120 (22 September 2021)

These two appeals arose out of Mr Kouwenhoven's endeavours to avoid his extradition to the Netherlands. He is a Dutch citizen, at present resident in Cape Town and a businessman who formerly had significant business interests in Liberia. On 21 April 2017 he was convicted by the Court of Appeal of 's-Hertogenbosch of repeatedly committing the offence of complicity in war crimes, and repeatedly violating the Dutch Sanctions Act, arising out of his involvement in the civil war in Liberia that raged between 1997 and 2003 and led to the downfall of the then President of Liberia, Charles Taylor. Mr Kouwenhoven was sentenced to serve a term of imprisonment of 19 years and his conviction and sentence have been upheld by the Supreme Court of the Netherlands.

On 8 December 2017, Mr Kouwenhoven was arrested pursuant to a warrant of arrest issued, in terms of s 5(1)(b) of the Extradition Act 67 of

1962 (the Act), by a Pretoria magistrate. The first appeal arose from review proceedings instituted by him to challenge the validity of his arrest and his being brought before a magistrate in Cape Town to face an extradition enquiry. The review failed in the high court and his appeal was dismissed today.

The review challenged Mr Kouwenhoven's arrest on four grounds. He contended that his attorney had concluded an agreement, or obtained an undertaking, from a police officer stationed at the Interpol desk in Pretoria that Mr Kouwenhoven would not be arrested pursuant to an application by the Netherlands for his provisional arrest under the extradition treaty between that country and South Africa. He said a similar agreement had been concluded, or undertaking given, by a senior legal adviser in the Department of Justice and Constitutional Development. The SCA held that no such agreement was concluded and no undertaking was given. It also expressed strong reservations at the proposition that either official was empowered to conclude such an agreement or furnish such an undertaking.

The remaining grounds of review were that the police officer's affidavit on which the arrest warrant was issued was not properly attested; that the magistrate merely 'rubber stamped' the request for the issue of a warrant; and that after issuing the warrant the magistrate failed to inform the Minister of Justice and Constitutional Development of that fact as required by s 8(2) of the Extradition Act. The SCA rejected each of these arguments. In the result the appeal was dismissed.

After the review had been dismissed in the high court an extradition enquiry was convened before a magistrate in Cape Town in terms of s 10 of the Extradition Act. At the end of that enquiry the magistrate discharged Mr Kouwenhoven on the grounds that the criminal conduct of which he had been found guilty had been committed in Liberia and not

the Netherlands. The Director of Public Prosecutions, Western Cape then required the magistrate to state a case in terms of s 310(1) of the Criminal Procedure Act 52 of 1977 and appealed to the Western Cape Division of the High Court. This prompted Mr Kouwenhoven to launch review proceedings alleging that an appeal under s 310 (1) was impermissible after an extradition enquiry and that, in any event, the process followed in preparing the stated case was flawed because he had not been given an opportunity to participate in it.

The high court had dismissed the review and upheld the DPP's appeal. The SCA today confirmed that decision. It held that, properly understood, an extradition enquiry is a criminal proceeding for the purposes of s 310(1) of the Criminal Procedure Act. It serves the purpose of enabling errors of law by the magistrate, leading to the discharge of the person whose extradition is requested, to be corrected. The process for formulating a stated case is set out in the rules and does not require the input of the person whose extradition is requested.

On the legal issue the court held that the relevant provisions of the Extradition Act dealing with extradition require that the crime for which the person is to be, or has been, charged, is one within lawful jurisdiction of the requesting state's courts. It is not confined to the territorial jurisdiction of those courts. Accordingly Mr Kouwenhoven could be extradited to the Netherlands to serve his sentence.