



**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: 8 June 2021  
STATUS: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***Minister of Police v Underwriters at Lloyds of London (Case No 1212/2019) [2021]  
ZASCA 72 (8 June 2021)***

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The Supreme Court of Appeal (the SCA) today dismissed an appeal against an order of the Gauteng Division of the High Court, Pretoria (Mavundla J) (the high court) dismissing an application to amend a plea filed on behalf of the Minister of Police (the Minister) in an action brought by the Underwriters at Lloyds of London (the Underwriters).

The action arose from a robbery carried out at the premises of SBV Services (Pty) Ltd (SBV) in Witbank in April 2014. Two members of the South African Police Services had conspired with, inter alia, an employee of SBV to carry out the robbery. An amount in excess of R100 million was stolen. SBV provided cash managing and depository services to several banks. The cash stolen was owned by these banks. The Underwriters provided insurance cover to SBV to insure it against an event such as occurred in the robbery. The Underwriters settled SBV's insurance claim and took cession of its claims to recover its losses from the persons responsible. The Underwriters instituted a claim in delict against the Minister alleging that the Minister was vicariously liable for the unlawful conduct of the members of the Police Services who had participated in and carried out the robbery.

When the trial commenced before the high court the Minister sought to amend its plea to introduce a defence based on the common law principle of illegality to the effect that a court will not countenance illegal activity and will not allow a party who acts illegally or unlawfully to profit from its own unlawful conduct. The proposed amendment asserted that since SBV is vicariously liable for the conduct of its employee who participated in the robbery, SBV was a party to the illegal and unlawful conduct giving rise to its loss. It was, for this reason, precluded from claiming damages against the Minister. The high court

rejected the argument. It found that the proposed defence is bad in law and does not introduce a triable issue.

Leave to appeal to the SCA was granted by the high court. The SCA found that the high court was correct to dismiss the application to amend. It held that the Minister had fundamentally misconstrued the concept of vicarious liability. Vicarious liability, it held, does not involve the attribution of the fault of the primary wrongdoer (the employee) to the employer. The Minister's reliance on the 'vicarious liability' of SBV was misplaced since the delict was committed against SBV. SBV could not be 'vicariously liable' to itself. The SCA accordingly found that the proposed amendment would render the plea excipiable by introducing a plea that was bad in law. In the light of this finding it was not necessary to consider the Minister's reliance upon the legal maxims giving expression to the principle of illegality nor to consider the position of SBV as a joint wrongdoer. The appeal was dismissed with costs.