



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: 4 June 2021

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

Kunene and Others v Minister of Police (260/2020) [2021] ZASCA 76 (4 June 2021)

Today the Supreme Court of Appeal (SCA) dismissed the appeal against an order of the Gauteng Division of the High Court, Johannesburg and ordered the appellants to pay the costs on an attorney and client scale, which includes the costs of two counsel where so employed.

This case concerns the rescission of two court orders granted consequent to settlement agreements concluded by the State Attorney on behalf of the Minister of Police. The central issue to be determined was whether the high court was correct to rescind and set aside the orders and underlying compromise agreements granted on 6 February 2017 and 2 March 2018 respectively.

The SCA held that the High court correctly concluded that Mr Lekabe did not act in good faith and was intent on subverting the law and his client's interests. Such fraudulent conduct is inimical to the rule of law and cannot form a legitimate basis for the Minister's liability. No public servant has the authority to subvert the constitutional principles on which the very idea of public confidence is founded. Mr Lekabe, initiated the settlement of the case without any authority to do so and he unlawfully authorised Mr Kajee to attend court to finalise the compromise agreement on the merits. All of this, contrary to clear and consistent instructions by SAPS as to the Minister's stance on the matter.

The SCA held further that the State Attorney is an organ of state as defined in s 239 of the Constitution, and that it was bound by rule of law and the principle of legality. The principle of legality is a mechanism that ensures that the State, its organs and its officials do not consider themselves to be above the law in the exercise of their functions.

The SCA found that when the impugned orders were granted, Mr Lekabe was in the employment of the Department of Justice and Correctional Services as Head of the State Attorney's Office. The Minister could not be bound by the illegal acts of Mr Lekabe and Mr Kajee (individually or jointly) and the appeal was dismissed with costs.