



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: 21 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

Rodrigues v The National Director of Public Prosecutions and Others (1186/2019) [2021] ZASCA 87 (21 June 2021)

The Supreme Court of Appeal (SCA) today granted an application for leave to appeal, but dismissed the appeal brought by Mr João Rodrigues against the decision of the Gauteng Division of the High Court, Johannesburg (the Full Court). No order was made as to costs.

The issue before the SCA was whether a lengthy delay in commencing criminal prosecution of charges, including murder, allegedly caused by political interference, caused the appellant, Mr João Rodrigues, trial-related prejudice justifying a permanent stay of prosecution.

The appellant was indicted in the Gauteng Division of the High Court, Johannesburg on a charge of murder and defeating and/or obstructing the administration of justice. The murder charge related to the death of the late Mr Ahmed Essop Timol, on 27 October 1971, at John Vorster Square Police Station. The appellant had not yet pleaded in the criminal trial. He filed an application, which was heard by a Full Court of the Division, in which he sought, inter alia, a permanent stay on the charge of murder in the criminal proceedings against him. He contended that it was unfair to charge him some 47 years after the death of Mr Timol. He further argued that the reason for the delay not to prosecute him was a deliberate decision of the National Prosecuting Authority (NPA), because of the interference by the Executive and the State President. The Full Court dismissed the application and refused leave to appeal. The appellant then brought an application for leave to appeal in the SCA. The Southern Africa Litigation Centre (SALC) and certain former Commissioners of the Truth and Reconciliation Commission (the TRC) successfully applied to the SCA to be admitted in the proceedings as amici curiae.

The application for leave to appeal was advanced on the basis that the Full Court erred in concluding that the delay in bringing the prosecution would not taint the fairness of the trial and violate the appellant's right to a fair trial in terms of s 35(3)(d) of the Constitution. Further, that the court erred in finding that he was not being prosecuted for an improper motive, and in not finding that the alleged political interference by the Minister of Justice and the State President, by stopping the prosecution of TRC cases, caused the unreasonable delay and had the effect of tainting the fairness of the trial he was required to face. He argued that a substantial number of further prosecutions of similar cases involving alleged offences perpetrated during the apartheid era by police officers, who did not seek amnesty for the offences from the TRC, would follow in future.

The majority judgment of the SCA held that the issue of the alleged political interference by the Executive and the State President in the prosecution of such crimes, and its ongoing impact and relevance for prosecutions that may still be instituted in future was certainly relevant. It, *inter alia*, raised the important question of what effect, if any, political interference, as a matter of principle, had on the operations of the criminal justice system. Thus, there was a compelling reason to grant leave to appeal.

In considering the merits of the matter, the majority judgment held that the ineluctable conclusion in all the circumstances was that political decisions were taken by the Executive which may have affected the investigation and prosecution of the TRC cases. The majority judgment agreed entirely with the Full Court's finding that while the issue of political interference was a matter of great seriousness, the absence of detail as to why it occurred was not an impediment to the determination of the matter. There was simply no evidence showing how the political interference impacted on factors relating to whether the substantial fairness of the trial was tainted. The majority judgment held further that it could not find that the Full Court erred in exercising the value judgment that it did in determining relief for a permanent stay of prosecution or that it misdirected itself in any manner justifying the interference of the court. The majority judgment found that there was no evidence that the 47 years pre-trial delay would inevitably taint the overall fairness of the trial, and that old age and infirmity would be relevant at the sentencing stage and were not grounds upon which the appellant could rely upon as a form of prejudice. Consequently, the majority judgment was not persuaded that the appellant had established that he had or would likely suffer trial-related prejudice if he was not granted a permanent stay of prosecution and was brought to trial. The trial court would be best suited to deal with any issue of potential prejudice. The appeal accordingly failed.

Cachalia JA wrote a minority judgment, in which he disagreed with the majority judgment that the appellant had made out a proper case for the appeal to be entertained by the SCA. Cachalia JA found that the appellant had not demonstrated any legal or factual basis that he had any reasonable prospects of success in an appeal, and that there were no compelling reasons to entertain the appeal. This was on the grounds that in the absence of any demonstrable trial-related prejudice, Cachalia JA was constrained to disagree that a proper case for leave was made out. Further, that there was no reason to revisit the question of political interference having tainted a decision to prosecute in this case. With regard to the delay, Cachalia JA found that the fact that there was political interference that contributed to the delay took the matter no further, as there was no evidence that the delay in this case would result in any trial-related prejudice. He would have accordingly dismissed the application for leave to appeal.

~~~~ends~~~~