



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

30 March 2009

STATUS: Immediate

B DUBE AND OTHERS & THE STATE CASE NO 523/07

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

The SCA granted an application in favour of the appellants for a special entry which related to the question whether the Judge President of the Bophuthatswana High Court who presided over an appeal against the appellants should have recused himself. The Judge President had sat with another judge in an appeal in which the advocate who represented the State was his wife.

The complaint was that because of the close relationship between the Judge President and his wife, he would not have brought an impartial mind to bear on the adjudication of the case before him.

The SCA accepted that it was not only the actual bias that would disqualify a judicial officer from sitting in a case but also a reasonable perception of bias. The court however accepted that in the present case no actual bias had been proved against the Judge President but considered that the reasonable perception entertained by the appellants was sufficient.

The court accordingly granted the application and made an order remitting the matter to the Bophuthatswana High Court for a re-hearing of the appeal before a re-constituted Full Bench.

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