



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

MASOANGANYE v THE STATE

The Supreme Court of Appeal (SCA) today dismissed an appeal by Mr Andries Joe Masoanganye against an order of the North West High Court, Mahikeng dismissing his application to be released on bail pending appeal, and upheld an appeal by Mrs Tlaleng Alina Mhleka against the same order of the North West High Court.

Both Mr Masoanganye and Mrs Mhleka (appellants), who were the Master and Assistant Master of the High Court in Mmabatho at the relevant time, were, together with Mr Abdul Kader Ahmed (an attorney), convicted of the theft of funds from the Guardian Fund. They were sentenced to periods of imprisonment. The trial court granted them leave to appeal to the full court of the North West High Court against conviction and sentence. It released Mr Ahmed on bail but refused the appellants bail. It stated that it was not satisfied that the appellants were not a flight risk because they did not have sufficient assets. Their co-accused was held not to be a flight risk only because he had sufficient assets.

The SCA encountered a problem in considering the appeal as the trial judge failed to give reasons for granting leave to appeal against conviction and sentence. This was exacerbated by the fact that the judgment on conviction was not before the SCA due to the failure of the trial judge to release it. This, the SCA stated, made it difficult for the SCA to assess whether the appellants had any prospects of success on the merits. In addition, the appellants did not deal with the merits of the appeal. This, together with other factors, meant that the SCA could but give little weight to chances of success on conviction. A further problem was that the trial court intimated that it had other reasons for refusing bail which it was prepared to disclose if approached. Such an approach was not made.

The SCA held that the trial court apparently failed to consider that the personal circumstances of an accused – much more than assets – determine whether the accused is a flight risk. Had the court considered the personal circumstances of the appellants, the SCA held, it would have been satisfied that they were not a flight risk. However, that was not the end of the matter. The court had to consider the seriousness of the crimes and the possible length of incarceration. The SCA found that there was a real likelihood that Mrs Mhleka might have served her full sentence by the time the appeal is finalised. This meant that unless she was released on bail her appeal might become academic. It substituted the order of the trial court with an order granting bail to Mrs Mhleka on certain conditions. In dismissing Mr Masoanganye's appeal the SCA considered the fact that he was sentenced to an effective period of ten years' imprisonment for having stolen, in his position as Master, over a period of more than a year a sum in excess of R1million from the Guardian Fund and government. It stated that there was no likelihood that his ultimate sentence would be reduced to less than three years. In the light of this, the SCA held, it was not appropriate to grant him bail.