



## 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** 28 September 2012  
**STATUS** Immediate

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

***DPP and Minister of Justice and Constitutional Development v Phillips (803/2011)  
[2012] ZASCA 140 (28 September 2012)***

The Supreme Court of Appeal (SCA) today dismissed with costs an appeal by the Director of Public Prosecutions and the Minister of Justice and Constitutional Development against an order of the South Gauteng High Court (Satchwell J), in terms of which it ordered a permanent stay of prosecution against Mr Andrew Lionel Phillips. Mr Phillips was arrested in February 2000 and on 22 December of that year substantial property was attached in terms of the provisions of the Prevention of Organised Crime Act 121 of 1998. The charges on which he had been arrested and later prosecuted were related to the keeping of a brothel and alleged further breaches of the law, apparently connected to that main activity.

In January 2004 the trial commenced in the regional court, Johannesburg. Phillips pleaded not guilty to the charges and proceedings in that court continued until November 2006. During the duration of the State's case a number of prosecutors were engaged in the prosecution. After the State closed its case on 20 November 2006, Phillips applied for a discharge in

terms of s 174 of the Act, which was refused. Subsequently, Mr Phillips raised a plea in terms of s 106(1)(h) of the Criminal Procedure Act 51 of 1977 (the Act), namely that a number of prosecutors, who conducted his prosecution, lacked title to prosecute. That plea was upheld.

Aggrieved, the Director of Public Prosecutions (DPP) required the Magistrate to formulate questions for an appeal by it to the South Gauteng High Court in terms of s 310 of the Act. Delays occurred in the prosecution of the appeal, mainly due to ineptitude on the part of the prosecution authorities. Years had passed since Mr Phillips' trial commenced. The contemplated appeal in terms of s310 by the DPP had not yet materialised, because a record of appeal, which is the responsibility of his office, has not yet been filed.

Because of the lengthy delay in finalising the appeal, Mr Phillips applied to the South Gauteng High Court for a permanent stay of his prosecution, on the basis that, even if it were to run its course, it would, because of the inexcusably lengthy delay, impinge on his right to a fair trial. Mr Phillips was successful in the High Court.

This court, in dismissing the appeal, said the following:

‘ . . . , [T]he permanent stay of the prosecution ordered by the court below was justified.

. . .

Phillips was arrested more than twelve years ago. An appeal record has still not been finalised. The time has come to put an end to a sorry saga.’