

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 31 March 2014

Status: Immediate

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.

**Macrae v State**

Dr and Mrs Macrae operate a game lodge. On 10 October 2006 a conservation officer, from the Directorate Nature Conservation in Gauteng, asked them if they would take a baboon that had been seized by the police, in conjunction with the Directorate, under a warrant issued in terms of the Criminal Procedure Act. They agreed to do so and the baboon was handed to them in terms of a document headed ‘Certificate of Handover to Institution’ and signed on behalf of the Directorate by the conservation officer. The reason for approaching them was that no public zoo was available to take the baboon.

The following day a senior official in the Directorate told the conservation officer that she had made a mistake in handing the baboon to the Macraes, as in terms of certain treasury regulations it should have been placed in a zoo approved by the treasury. There followed some exchanges between the officials of the Directorate and the Macraes, in which the officials demanded the return of the baboon and the Macraes maintained that it had become their property, subject to the outcome of criminal proceedings against the person from whom it had been seized.

On 18 October an official, Mrs Boshoff, arranged for a party including two conservation officers, a vet, a third party, the police officer

who had originally seized the baboon and two members of the flying squad, to proceed in convoy to the Macraes' property in order to retrieve the baboon. They found that the baboon had gone for a walk and Dr Macrae challenged their right to take the baboon. This resulted in Dr Macrae, and thereafter his wife, Mrs Macrae, being arrested. They were both charged with theft of the baboon and with defeating or obstructing the administration of justice. They were convicted in the magistrates' court after a four day trial and their appeal to the Gauteng North High Court failed.

The SCA today set aside their convictions and sentences on all counts. It held that they had bona fide believed that the baboon had been given to them and that this negated any criminal intention on their part. In any event, they had not stolen the baboon. There was a misapprehension by the conservation officers as to their rights in relation to the animal. It was for the police to deal with the animal once it had been seized and they had made perfectly acceptable arrangements for its care pending the criminal trial. Instead the police had co-operated with the conservation officers to recover the baboon for bureaucratic reasons unconnected with the requirements of the Criminal Procedure Act. Furthermore the Macraes had not had a fair trial and on that ground also the convictions could not stand.