



## 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** 1 April 2016  
**STATUS** Immediate

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

***Minister of Safety and Security v Tembop Recovery (006/15) [2016] ZASCA 52 (1 April 2016)***

---

#### MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) granted leave to appeal to the Minister of Safety and Security and the Director of Public Prosecutions, Gauteng Local Division (the appellants) and upheld the appeal against the order by the Gauteng Local Division of the High Court, Johannesburg (the high court).

This appeal, though civil in nature, arose as a result of a criminal matter which is still pending. During 2011, the police secured search and seizure warrants against the third and fourth respondents, after it was alleged that they were involved in a syndicate which allegedly smuggled and exported platinum Gauteng and North West regions. The police seized several items from the respondents and after further investigations, the third and fourth respondents were charged under the Prevention and Combating of Corrupt Activities Act 12 of 2004 (POCA). The prosecution of the matter was not expeditious, and after several postponements of the trial in the Krugersdorp Regional Court, mainly at the State's instance, the State provisionally withdrew the charges against the third and fourth respondents. According to the State, it required these postponements because it was in the process of obtaining permission from the Director of Public Prosecutions in North West and Gauteng, to hold the trial in Johannesburg, as the crimes had been committed in both these North West and Gauteng and also because it was in the process of amending the indictment to include charges under POCA against the third and fourth respondents, and other accused.

After the State provisionally withdrew the charges against the third and fourth respondents, they applied to the high court for an order to direct the State to return to them, the items which had been

seized under the warrants (the main application). The appellants opposed this application and in their opposing affidavit, made reference to several documents. The respondents then issued notice in terms of Uniform rule 35(12) and (13), requesting the appellants to provide them with the documents which they had referred to in the opposing affidavit. The appellants failed to provide these documents, resulting in the respondents lodging an interlocutory application in the high court, in terms of Uniform rule 30A, this time to strike out the respondent's defence in the main application. This interlocutory application was enrolled for hearing, and on the day that it was heard, the appellants delivered a notice in terms of Uniform rule 6(5)(d)(iii) refusing to provide the documents, and raising points of law, including privilege and the reinstatement of the criminal proceedings against the third and fourth respondents. As a result of the delivery of the notice, the hearing was postponed and was again heard on 26 August 2014. They also had to deliver an application for condonation for the late delivery of the rule 6 notice.

The high court dismissed the appellants' condonation application and granted the respondents' application to strike out the appellants' defence in the main application. The result was that the main application, being the application to return the seized items, was now unopposed. This was in spite of the rule 6 notice indicating that the State had reinstated the charges against the third and fourth respondents.

The appellants appealed the high court's order, and leave to appeal was refused, with the result that the appellants lodged these proceedings in the SCA.

In the SCA, the issues for determination were whether the appellants' application for leave to appeal and application for condonation for the late filing of their rule 6(5)(d)(iii) notice were correctly dismissed. The court also had to decide whether the high court properly exercised its discretion when it struck out the appellants' defence to the main application whilst criminal proceedings were pending.

The SCA granted the appellants leave to appeal and the application for condonation in relation to the late filing of the rule 6 notice. In considering the interlocutory application, it held that applications amounting to preliminary litigation pending the outcome of criminal proceedings should not be encouraged as it is the duty of the criminal trial to deal with all issues relating to the aspects that will affect the criminal trial. The SCA cautioned that decisions by a civil court to interfere with the trial court's decision should be exercised sparingly, in exceptional circumstances only. The court further said that the high court should strike a balance between the policy considerations, public interest, interests of justice and the rights of the respondents, and that in this instance, the high court had failed to do so.

--- ends ---