



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 30 March 2017
STATUS Immediate

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

Brooks v NDPP (855/16) [2017] ZASCA 42 (30 March 2017)

MEDIA STATEMENT

The Supreme Court of Appeal today upheld an appeal by Mrs and Mr Brooks against a judgment of the Northern Cape Division of the High Court, Kimberley. The SCA was required to decide whether their home in Kimberley, which they jointly own, was an instrumentality of an offence; and whether an order in terms of which their home was declared forfeit to the State under s 48(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA), was appropriately made by the court a quo, having regard to the rights of their two minor children and Mrs Brooks, the innocent spouse. The property was allegedly used in the commission of numerous offences of trading in unpolished diamonds.

The SCA assumed, without deciding, that the property was an instrumentality of the various offences of illicit diamond-dealing. It held that the grant of a forfeiture order was disproportionate and upheld the appeal. The SCA found that the Diamonds Act 50 of 1986 makes provision for forfeiture as regards illicit diamond-dealing, and that forfeiture in terms of POCA may be doubly punitive. The SCA also found that court a quo did not properly assess the lack of culpability on the part of Mrs Brooks nor the interests of the minor children when it undertook the proportionality analysis. It held that the interests of the children constitute a separate and an important consideration and cannot merely be dealt with as one of several factors weighed on the proportionality scale. Whilst the interests of parents and their children necessarily overlap, the children's interests may well differ from the parents' in a case such as this. There may be a significant divergence and even a conflict between the parents' and the children's interests. The critical question, the SCA said, is whether the information before the court is sufficient to consider the interests of the children.

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