



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

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

From: The Registrar, 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.*

**DIRECTOR OF PUBLIC PROSECUTIONS**

**v**

**MOLOI**

Today the Supreme Court of Appeal handed down judgment dealing with an appeal under s 311 of the Criminal Procedure Act. This allows for an appeal to this court from a high court sitting as a court of appeal where that court decided a point of law in favour of the convicted person.

In the present matter, Mr Moloï was convicted of one count of rape in the Nelspruit regional court and sentenced to life imprisonment. He exercised his right of appeal which came before the Gauteng Division of the High Court, Pretoria. The high court upheld his appeal and set aside his conviction and sentence. It did so on the basis that DNA evidence linking Mr Moloï to the rape was unreliable. Having made this finding, the high court did not consider the other evidence and assess whether the other evidence was itself sufficient to convict Mr Moloï.

The Director of Public Prosecutions invoked the provisions of s 311, arguing that the failure by the high court to consider the other evidence amounted to a question

of law and raising another question. The DPP applied for leave to appeal on those bases and the Supreme Court of Appeal required argument on the application for leave to appeal and indicated that the parties should be prepared to argue the merits of the appeal at the same time.

The Supreme Court of Appeal unanimously found that the high court simply failed to consider admissible evidence by confining itself to the DNA evidence. The failure to do so was a question of law decided in favour of Mr Moloji. The provisions of s 311 of the CPA were therefore triggered. The first question of law was decided in favour of the DPP. It was held that it was unnecessary to decide the second question. The error of law committed by the high court, in the exercise of its appeal jurisdiction, was fundamental and of so gross a nature as to vitiate the proceedings in that court. The result is that the respondent's appeal had not been heard on the merits. The conviction and sentence of the respondent were re-instated in their original form as imposed by the regional court. The matter was remitted to the high court for it to properly exercise its appeal jurisdiction.

The majority judgment held, in addition, that an appeal under s 311 was one regulated in terms of the Criminal Procedure Act. The definition of 'appeal' in s 1 of the Superior Courts Act excluded an appeal regulated in terms of the Criminal Procedure Act from the provisions of the Superior Courts Act regulating appeals. This meant that it was unnecessary to obtain the special leave of the Supreme Court of Appeal and the appeal was one of right, without leave.

The minority judgment took the view that special leave to appeal was necessary and that an appeal under s 311 was not one regulated in terms of the Criminal Procedure Act. It would have granted special leave and upheld the appeal on the same basis. It therefore concurred in the order.