



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

The NDPP v Media 24 Limited & others and Van Breda v Media 24 Limited & others

From: The Registrar, Supreme Court of Appeal

Date: 21 June 2017

Status: Immediate

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

Today, the Supreme Court of Appeal (SCA) handed down judgment in an appeal brought separately by the National Director of Public Prosecutions (NDPP) and Mr Henri Christo van Breda (the appellant) against a judgment of the Western Cape Division, Cape Town (court a quo). The matter originally arose out of an urgent application to the court a quo brought by the 1st respondent, Media 24 Limited, that it be allowed to televise or sound record the proceedings in the ongoing Van Breda criminal trial.

On appeal, the SCA opined that the question whether, and under what circumstances, cameras should be permitted in South African courtrooms provokes tension between the rights of the media to freedom of expression, on the one hand and the fair trial rights of an accused person, on the other. Further, that when two constitutional rights are in conflict, the rights should as far as possible be harmonised with one another. The SCA held that the right to freedom of expression is not limited to the right to speak, but also to receive information and ideas. The court recognized the key position that the media holds in society and found that the constitutional right to freedom of expression goes hand in hand with the principle of open justice, according to which trial proceedings should be conducted publicly in open court.

In considering the right to a fair trial, the SCA acknowledged that one of the most persuasive objections relating to the opposition of cameras in courts is the possible effect that cameras, and the larger audience they represent, may have on the testimony of witnesses in criminal trials. The SCA held that courtrooms are already public places with a physical public presence and that it was open to debate whether such public presence could be said to have an inhibiting or distracting effect on

counsel, judges and/or the witnesses. The SCA emphasised that it remains the duty of the trial court in the exercise of its discretion under s 173 of the Constitutions, to examine with care the approach to be taken with regard to each application. As such, the court indicated that it was undesirable that any rigid rules be laid down as to how such requests ought to be considered. The SCA accordingly rejected the approach of the NDPP that there should be a blanket ban on live broadcasts in all criminal proceedings.

The SCA held that It shall be for the trial court to exercise a proper discretion having regard to the circumstances of each case. The default position, so stated the SCA, is that there can be no objection in principle to the media recording and broadcasting counsel's address and all rulings and judgments (in respect of both conviction and sentence) delivered in open court. In addition to a case-by-case determination, when a witness objects to coverage of his or her testimony, such witness should be required to assert such objection before the trial judge, specifying the grounds therefor and the effects he or she asserts such coverage would have upon his or her testimony. This approach entails as well a witness-by-witness determination and recognises that a distinction may have to be drawn between expert, professional (such as police officers) and lay witnesses. Such an individualised enquiry, held the SCA, is more finely attuned to reconciling the competing rights at play than is a blanket ban on the presence of cameras from the whole proceeding when only one participant objects. Under this approach cameras are permitted to film or televise all non-objecting witnesses and spurious objections can also be dealt with. If the judge determines that a witness has a valid objection to cameras, alternatives to regular photographic or television coverage could be explored that might assuage the witness' fears. For example, television journalists are often able to disguise the identity of a person being interviewed by means of special lighting techniques and electronic voice alteration, or merely by shielding the witness from the camera. In other instances, broadcast of testimony of an objecting witness could be delayed until after the trial is over.

Consequently, having had regard to the position in various foreign jurisdictions as well as the need for an intricate balancing of the constitutional rights at play, the SCA concluded that courts should not restrict the nature and scope of the broadcast unless the prejudice is demonstrable and there is a real risk that such prejudice will occur. Mere conjecture or speculation that prejudice might occur, so stated the SCA, ought not to be enough. In the result, the appeal was partially upheld and the matter was remitted to the court a quo for reconsideration in accordance with the principles set out in the judgment.