THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case nos: 1028/2023

1112/2023

In the matter between:

MANYABA RUBBEN MOHLALOGA **APPLICANT/APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Mohlaloga v The State* (1028/2023 and 1112/2023) [2025] ZASCA 115 (8 August 2025)

Coram: MOKGOHLOA ADP and KATHREE-SETILOANE JA and PHATSHOANE, BLOEM and MOLITSOANE AJJA

Heard: 7 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 8 August 2025.

Summary: Criminal Law – s 17(2)*(f)* of Superior Courts Act 10 of 2013 – application for reconsideration of a decision refusing special leave to appeal – no exceptional circumstances to warrant reconsideration of decision – application struck from the roll. Appeal against sentence – no misdirection – sentence not disproportionate to severity of the offences committed – sentence confirmed.

ORDER

On application for reconsideration: referred in terms of s 17(2)(*f*) of the Superior Courts Act 10 of 2013:

1 The application for reconsideration of the decision refusing special leave to appeal against conviction is struck from the roll.

2 The appeal against sentence is dismissed.

JUDGMENT

Kathree-Setiloane JA (Mokgohloa ADP, Phatshoane, Bloem and Molitsoane AJJA concurring):

[1] This is the reconsideration of a decision of this Court refusing an application for special leave to appeal against the order of the Gauteng Division of the High Court, Pretoria, Neukircher and Sardiwalla JJ sitting as a court of appeal (the high court). The high court dismissed an appeal against the conviction and sentence of the applicant, Mr Mohlaloga, by the Regional Court for the Regional Division Gauteng, Pretoria (the regional court).

Background

[2] Mr Mohlaloga was accused 2 in the regional court. He was convicted on one count of fraud (count 1) and one count of contravention of s 4 of the Prevention of Organised Crime Act 121 of 1998 (POCA) (count 2). The regional court sentenced

the appellant to 15 years' imprisonment on each count and ordered that 10 years of the sentence on count 2 will be served concurrently with the sentence on count 1. The effective sentence is 20 years' imprisonment.

[3] Mr Mohlaloga appealed his conviction and sentence to the high court. On 23 January 2023, the high court dismissed the appeal and confirmed his conviction and sentence. He applied to this Court for special leave to appeal against the dismissal of his appeal by the high court. Mbatha JA and Unterhalter AJA (as he then was) granted Mr Mohlaloga special leave to appeal against sentence but refused leave against conviction. On 1 September 2023, Mr Mohlaloga applied to the President of this Court (the President), in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (Superior Courts Act), for a reconsideration of the decision refusing special leave to appeal on conviction. On 3 January 2024, the President referred the decision for reconsideration and, if necessary, variation to this Court. She also referred the application for special leave to appeal for oral argument in terms of s 17(2)*(d)* of the Superior Courts Act.

[4] The application for reconsideration has its genesis in a sector specific empowerment project: the Agri Broad Based Black Economic Empowerment (AgriBBBEE). It was approved by parliament to assist previously disadvantaged farmers financially. Its objective was to facilitate broad-based black economic empowerment in the agricultural sector. It aimed to achieve this by implementing initiatives to include black South Africans at all levels of agricultural activity and enterprises along the entire agricultural value chain, to contribute to the acceleration of shared growth and wealth creation in the agricultural sector. Pursuant to these objectives, the National Department of Agriculture (the DOA) and the Land and Agricultural Bank of South Africa (the Land Bank) created the AgriBBBEE Fund

(the Fund) to facilitate access to equity and develop small and medium enterprises. The Fund was managed and administered by the Land Bank on behalf of the DOA. It received an amount of R100 million from the National Treasury.

[5] Applications for funding were submitted to Mr Mosoma, the Fund Manager (based at the Land Bank), or directly to the DOA. They were to be assessed according to the requirements of the AgriBBBEE Operational Manual (the manual). The National Advisory Panel (the NAP) was responsible for approving or rejecting an application for a grant from the Fund.

[6] The Land Bank was responsible for concluding a due diligence on the applications and/or proposed projects. Project documentation was to be kept at the Land Bank and had to include: a letter of application (application form); business proposal and business plan; all project documentation requesting funding; assessment of application and compliance to criteria eligibility; and a due diligence investigation. Paragraph 5.5.1 of the manual explicitly provided that politicians, while holding public office and government employees do not qualify and will not be eligible for grants from the Fund.

[7] Mr Mohlahlane, the first accused in the trial, was employed by the DOA as Deputy Director General and was officially seconded to the Land Bank as the acting Chief Executive Officer (acting CEO) during August 2007. Mr Mohlaloga, who was a member of parliament and the Chairperson of the Portfolio Committee on Agriculture (the Portfolio Committee), at the time, approached Mr Tjia with a proposal to approach Mr Mohlahlane to discuss the funding of a farming project. As acting CEO of the Land Bank, Mr Mohlahlane was required to report on the Fund to

the Portfolio Committee. Mr Tjia was the CEO of the Limpopo Youth Commission in the Office of the Premier of Limpopo.

[8] Mr Mohlaloga subsequently met Mr Tjia and Mr Nkhwashu, an attorney and partner at the law firm Dingamanzi Ka Dinga (DKD attorneys), at his house in Polokwane. Mr Nkhwashu was the third accused in the trial and DKD attorneys was the fourth accused. Mr Mohlaloga, Mr Tjia and Mr Nkhwashu discussed embarking on a broad-based youth empowerment project to empower, educate and employ the youth. Mr Mohlaloga knew Mr Nkhwashu because he had done some work in the past for him. During December 2007, Mr Mohlaloga met with Mr Mohlahlane and discussed the proposed project with him. Mr Mohlahlane asked Mr Tjia how much money was required for their proposed project. Mr Tjia informed him that an amount of R500 000 would be sufficient. Mr Mohlahlane undertook to submit an application for funding to the Land Bank.

[9] Mr Mohlahlane informed Mr Mohlaloga that they qualified for a R3 million grant from the Fund. Mr Mohlaloga relayed this information to Mr Tjia and Mr Nkhwashu. With that knowledge, Mr Mohlaloga and Mr Tjia immediately changed plans and the idea of a broad-based empowerment program was abandoned. They decided to buy a farm on receipt of the grant. It was apparent, from that point on, that they intended to make a profit from the project and it ceased to be a broad-based empowerment programme.

[10] Mr Mohlaloga and Mr Tjia then began their search for a farm to buy. They found a suitable one, at Dendron, but the purchase price was R4 million. In January 2008, a subsequent meeting was held between Mr Mohlaloga, Mr Mohlahlane, Mr Nkhwashu and Mr Tjia at Mr Mohlaloga's residence. Mr Mohlahlane proposed

that Mr Tjia should apply for a grant of R6 million from the Fund as Mr Mohlaloga was not eligible to apply. He brought it to their attention that the manual prohibited serving politicians from applying and/or benefiting from the Fund.

[11] On being informed of this, Mr Mohlaloga instructed Mr Tjia to make the application. Mr Nkhwashu was appointed as the legal advisor. Mr Tjia drafted the application in manuscript, while Mr Mohlahlane dictated it to him. On completion of the application, Mr Tjia appended his signature to it. Mr Mohlahlane then undertook to hand this application to Mr Mosoma at the Fund but never did so. Mr Mohlahlane did, however, submit a typed version of the application to the Fund containing a signature resembling that of Mr Tjia.

[12] A few days later, Mr Mohlaloga and Mr Tjia decided to look for another farm to purchase as they considered Dendron to be overpriced. Mr Mohlaloga undertook to inform Mr Mohlahlane of this. During January 2008, Mr Mohlahlane approached Mr Mosoma at the Land Bank and handed him the application signed by Mr Tjia. He informed Mr Mosoma that the Minister was extremely frustrated because there was no progress with empowerment programs and instructed him to prepare the payment documents. The project was presented to Mr Mosoma as the Dingwako Agricultural Project, to empower the youth in the agricultural sector. On 23 January 2008, Mr Mosoma, on the instructions of Mr Mohlahlane, authorised a request for payment of R6 million. There was no formal application, no business plan or due diligence performed on the project. The application was also never considered or approved by the NAP.

[13] A complication arose when there was an audit on the Fund, and Mr Mosoma had no documents to show. A paper trail was created and various documents were

falsified in an attempt to mislead the auditors. There was no contract in place. Mr Mosoma decided that the solution would be to call a NAP meeting in order to have the irregular payment 'ratified'. But for the audit the transaction would never have been discovered.

[14] On 1 February 2008, R6 million was transferred from the Fund to the trust account of Mr Nkhwashu's law firm (DKD attorneys' trust account). It reflected in the account on 6 February. This payment was disbursed largely to Mr Mohlaloga. Within a period of three months from date of payment of the R6 million into the DKD attorneys' trust account, an amount of only R22 641.44 remained. The grant money was depleted, and not a cent had been spent for the purpose for which it had been originally designated by the Land Bank.

[15] Mr Mohlaloga received the following benefit: On 4 February 2008, R80 000 was transferred from the DKD attorneys' trust account to his personal bank account. On 13 March 2008, an amount of R866 150 was paid to Leo Hasse BMW Hatfield out of the DKD attorneys' trust account for two BMW vehicles registered in the name of Mr Mohlaloga. A further payment of R2 800 000 was transferred from that trust account into the bank account of the Disetla Family Trust (Mr Mohlaloga's family trust) in three traches: R800 000 on 1 April 2008; R1 000 000 on 11 April 2008, and R1 000 000 on 12 April 2008.

[16] Between 7 August 2008 and 13 October 2008, 10 individual payments totalling R2 290 000 were made from the Disetla Family Trust account back to the DKD attorneys' trust account. This money was almost immediately paid, in seven

instalments between 12 August 2008 and 13 October 2008, to the trust account of Henstock and Van den Heever, being payment for the farm Schuinshoek.[1]

[17] A total of R270 000 was transferred in five transactions between 17 April 2008 and 13 October 2008 to the personal account of Mr Mohlaloga. He transferred R10 000 to the account of his wife, bought art for R30 000 and a timeshare for R61 000. He also bought a stationary business for a total of R263 771 in January 2009. He made a payment of R150 000 on 6 August 2008, and a payment of R70 000 on 3 March 2009, to the account of Mr Mokase, the attorney of Mr Mohlahlane, for the benefit of Mr Mohlahlane. All the money used to make the abovementioned disbursements was Landbank/Fund money. As a result, the grant of R6 million was totally exhausted.

[18] Mr Tjia and Mr Mosoma gave evidence in the trial for the state. They were witnesses in terms of s 204 of the Criminal Procedure Act 51 of 1977 (the Criminal Procedure Act). Mr Söhnge gave evidence on the flow of the money. He was a properly qualified chartered accountant with Price Waterhouse Coopers at the time and conducted the forensic investigation.

[19] The issue for determination in this application is whether there are exceptional circumstances that warrant a reconsideration of the application refusing leave to appeal on conviction.

Exceptional Circumstances

[1] The only money that was repatriated to the DKD attorneys' trust account is R2 800 000 referred to above, and two payments totalling R470 000 on 12 and 13 December 2008. According to the evidence led in the regional court, the latter amount was received when Mr Mohlaloga sold one of the BMW cars to Mr Ebrahim of ISCARS.

[20] In *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others*,[2] this Court held that the court to which the decision refusing leave to appeal is referred, is required as a threshold question to determine whether there are exceptional circumstances that warrant a referral for reconsideration. More recently, in *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena (Bidvest),*[3] this Court endorsed that position when it held that the court to which the referral is made is 'to be the ultimate arbiter as to whether the jurisdictional fact for the exercise of the power exists'. Thus, before this Court may proceed to reconsider the decision of the high court refusing leave to appeal, Mr Mohlaloga is required to demonstrate that there are exceptional circumstances that warrant a reconsideration of the decision refusing leave to appeal.

[21] As held by the Constitutional Court in *Liesching and Others v S*,[4] exceptional circumstances envisaged in s 17(2)*(f)* of the Superior Courts Act are circumstances which give rise to a probability of grave individual injustice, or the administration of justice might be brought into disrepute if no reconsideration occurs. This formulation has been adopted by the legislature in the amendment to s 17(2)*(f)* which came into effect on 3 April 2024. Since this matter was referred by the President to this Court for reconsideration on 3 January 2024, the old formulation of s 17(2)*(f)* still applies.

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[2] *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others* [2024] ZASCA 80; 2024 JDR 2195 (SCA) para 14.
[3] *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena (Bidvest)* [2025] ZASCA 23; 2025 (3) SA 362 (SCA) para 13.
[4] *Liesching and Others v The State* [2018] ZACC 25; 2019 (4) SA 219 (CC); 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC) para 138.

[22] Mr Mohlaloga sets out, in his s 17(2)*(f)* application for reconsideration, what he claims to be exceptional circumstances that warrant a reconsideration of the decision refusing leave to appeal as follows:

'It is respectfully submitted that the blatant misapplication of fundamental legal principles, particularly pertaining to charge sheets, the evaluation of the evidence of the s 204 witness, Mr Tjia, and the negligible application of the doctrine of common purpose, in stark contrast to the trite principles set out in *S v Safatsa and Others*,[5] are at the very least 'atypical' and unprecedented', with due regard to the particular facts of the matter, and therefore constitute exceptional circumstances which justify the relief sought in this application.

I verily believe that due and adequate consideration will be given to this application in terms of s 17(2)(*f*) of the Act, as a failure to do so, with the greatest of respect, and a failure to refer the application to the Justices who refused leave to appeal, will result in an irreparable injustice which will be so grave that it would essentially, redefine the approach courts have to adopt regarding averments in charge sheets and the State's burden to prove same. It will further lead to an untenable precedent promoting a notion that to defy the principles espoused in *S v Van der Meyden*,[6] followed by a myriad of Judgments of this Court how to approach evidence in the criminal cases and evaluating it. If the Judgment of the Court of Appeal (Court below) stands, it will amount to irreparable harm to me, the administration of justice, and the public at large. It will, moreover, with respect, inevitably lead to a travesty of justice, that will profoundly impact on our criminal procedure, criminal law and the law of evidence.

In addition to the assertions advanced above, it is compelling, with respect, to also deal with the principles espoused in the seminal judgment of *S v Hugo*.[7] These principles are imbued in our law and imparts on the trier of fact the obligation to apply same. A deviation of these principles is fatal. Despite this, the principles, as contemplated in *S v Hugo* (supra) were totally ignored, and yielded a conviction of fraud, which by any stretch of imagination was impossible.

It is trite that the conclusion which is reached by a court (whether it be to convict or to acquit) must account for all the evidence – good or bad. The s 204 witness, Tjia, conceded that not a single one of the misrepresentations alleged in the charge sheet were made, or that the appellant had the

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[5] *S v Safatsa and Others* 1988 (1) SA 868 (A).
[6] *S v Van der Meyden* 1999 (1) SACR 447 (W).
[7] *S v Hugo* 1976 (4) SA 536 (A).

requisite *mens rea* to commit these misrepresentations and a fraud. The Court of Appeal, who granted him indemnity from prosecution, does not take this into account at all. The Court of Appeal found Tjia's evidence to be satisfactory in all material respects and found him to be a credible witness, whilst simply ignoring the exculpatory evidence, which was presented by the very same witness. This approach flies in the face of the principles espoused in *S v Van der Meyden*.
The conviction in terms of contravening both 4*(a)* and 4*(b)* of POCA flows from a complete disregard for the elements of the statutory offence as are contained in the ordinary wording of the statute. There exists simply no evidence to sustain this conviction. It is imperative for legal certainty that the Supreme Court of Appeal pronounces on the proper interpretation of the statute and the purview of the offences it creates.'

[23] I am unable to find that exceptional circumstances exist in this case that warrant a reconsideration of the decision refusing leave to appeal. The errors which the high court is said to have made ultimately turn on the evaluation of the evidence and findings of fact and law which have been raised before in Mr Mohlaloga's appeal in the high court, and in his application for special leave which was refused by two judges of this Court.

[24] The error relating to Mr Mohlaloga's conviction under s 4*(a)* and *(b)* of POCA turns on the application of the law to the facts. The charge sheet alleges that Mr Mohlaloga is guilty of the contravention of s 4*(a)* and/or s 4*(b)* of POCA. The regional court convicted Mr Mohlaloga on count 2 as charged. On appeal, the high court found that the evidence established Mr Mohlaloga's guilt in respect of both s 4*(a)* and 4*(b)* of POCA. Although this is a finding in law, it was raised before by Mr Mohlaloga in the appeal before the high court, and in the application for special leave to appeal which was refused by two judges of this Court. As held by this Court in *Avnit v First Rand Bank Ltd*,[8] 'an application that merely rehearses the arguments

[8] *Avnit v First Rand Bank Ltd* [2014] ZASCA 132; [2014] JOL 32336 (SCA) para 6.

that have already been made, considered and rejected will not succeed, unless it is strongly arguable that justice will be denied unless the possibility of an appeal can be pursued'. Accordingly, I am of the view, that Mr Mohlaloga has failed to demonstrate that the so-called errors which he seeks to appeal against constitute exceptional circumstances such that, if not reconsidered, would result in a grave injustice or place the administration of justice into disrepute.

[25] Mr Mohlaloga has accordingly been unable to meet the heightened threshold to demonstrate exceptional circumstances. In the circumstances, the application for reconsideration of the refusal of the application for leave to appeal against sentence falls to be struck from the roll.

Appeal against Sentence

[26] It is well established that sentencing involves the exercise of a discretion by the trial court, and an appeal court cannot interfere with that discretion unless it is not judicially exercised, in that the trial court committed a misdirection on a material aspect or that the sentence is so severe that it induces a sense of shock.[9]

[27] Mr Mohlaloga's primary ground of appeal is that an effective term of 20 years' imprisonment on both counts is shockingly disproportionate to the convictions of fraud and money laundering. In addition, he contends that the regional court erred in failing to find that there are substantial and compelling circumstances which justified a lesser sentence on his conviction on fraud.

[9] *S v De Jager* 1965 (2) SA 616 AD at 628-629.

[28] With reference to the sentence on count 1 (fraud), s 51(2)*(a)*(*i*) of the Criminal Law Amendment Act 105 of 1997 (CLAA) applies. It prescribes a minimum sentence of 15 years' imprisonment for a first offender convicted of an offence in Part II of Schedule 1, which includes fraud where the amount exceeds R500 000. The minimum sentence is applicable unless the trial court finds that there are substantial and compelling circumstances that warrant a lesser sentence. The minimum sentence applies to Mr Mohlaloga's conviction on count 1.

[29] In relation to this count, the regional court considered all the mitigating and aggravating factors and concluded, correctly so, that there are no substantial and compelling circumstances that justified a lesser sentence. The regional court considered the following factors in mitigation of sentence: Mr Mohlaloga was 46 years old at the time of sentencing; he was a first offender; he was married with three minor children and two adult children; his wife was unemployed; he supported the extended family, including his mother, mother-in-law, sister and her husband; he was highly educated and graduated from the University of London.

[30] The mitigating factors must, however, be weighed up against the aggravating factors: These are that Mr Mohlaloga played a pivotal role in the commission of the offences while he was an elected member of parliament and Chairperson of the Portfolio Committee on Agriculture. In electing him to parliament, the electorate put their trust in Mr Mohlaloga. He, however, abused that trust by perpetrating the crime of fraud against the Fund which was funded by taxpayers' money. Mr Mohlaloga understood, as a member of parliament, that he was not eligible to apply for a grant from the Fund. The manual set this out unequivocally. So, to overcome this impediment, he instructed Mr Tjia to make the application in his name.

[31] AgriBBBEE was a noble project that was intended to uplift and empower previously disadvantaged and emerging farmers in the agricultural sector to progress to commercial farming. As chair of the Portfolio Committee to which the Land Bank, through Mr Mohlahlane, reported on the Fund, he was enjoined to protect the money in the Fund and ensure that it was allocated to the intended recipients. Instead, he colluded with other public officers to defraud the Fund for self-benefit. Mr Mohlaloga, including Mr Mohlahlane and Mr Nkhwashu, committed the offences out of pure greed. There is no evidence that they needed the money to survive.

[32] Mr Mohlaloga was the principal beneficiary of the grant. The R2 800 000 that was transferred into the Ditsetla Family Trust, was for him to use for his personal benefit. Mr Mohlaloga and his family were the beneficiaries of the trust. Despite being highly educated, well-connected and successful, he believed that he was entitled to the grant from the Land Bank and could do with it as he pleased. He, therefore, justified purchasing two BMW motor vehicles with the grant money – one for himself and the other for his wife – and using it to buy a stationary business, art, etc.

[33] By the end of April 2008, there was no money left for the project. A total amount of R3 600 000 was paid to Mr Mohlaloga. Except for the R2 800 000 that was repatriated to pay for the farm, nothing has been paid back. Mr Mohlaloga only bought the farm as a smoke screen to prevent detection and fool the auditors. He failed to recognise that the grant was intended to empower disadvantaged people in the agricultural sector, and that by defrauding the Fund, he was denying those who most needed its financial assistance.

[34] It is inconceivable that Mr Mohlaloga did not know what the purpose of the grant was, and that it was directed at empowering previously disadvantaged people. Despite being given an opportunity to repay the money by the regional court, Mr Mohlaloga failed to do so. It is clear from his testimony during the trial that he lacked remorse. He remained adamant that the grant money belonged to him and repeatedly stated: 'I do not know what you mean by Land Bank money, because once the money is approved and given to the beneficiary, it belongs to the beneficiary'. These factors weighed heavily against Mr Mohlaloga in the regional court. Thus, having considered the mitigating and aggravating circumstances, the regional court cannot be faulted for concluding that that there were no substantial and compelling circumstances which warranted a deviation from the minimum sentence of 15 years' imprisonment on the conviction of fraud.

[35] I now deal with the appeal against the sentence of 15 years' imprisonment imposed in respect of count 2. Section 8(1) of POCA provides that a person convicted of a contravention of s 4, 5, or 6 shall be liable to a fine not exceeding R100 million or to imprisonment for a period not exceeding 30 years' imprisonment. In the circumstances, a sentence of 15 years' imprisonment cannot be said to be overly severe. Acting out of mercy, the regional court allowed 10 years of that sentence to run concurrently with the sentence of 15 years' imprisonment for the fraud conviction. In my view, the effective sentence is proportionate to the severity of the offences of fraud and money laundering as contemplated in s 4 of POCA.

[36] Corruption and white-collar crime in state-owned entities lead to economic decline, job losses, more poverty, and reduced public trust. Unless those convicted of such crimes receive appropriate sentences, public confidence and participation in

government institutions would be completely eroded, leading to increased inefficiencies and possible collapse.

[37] Thus, having regard to the *Zinn*[10] triad of the gravity of the offences committed by Mr Mohlaloga, his circumstances and the public interest, I am of the view that an effective sentence of 20 years' imprisonment is not shockingly inappropriate. For these reasons, the appeal against sentence must fail.

[38] In the result, I make the following order:

1 The application for reconsideration of the decision refusing leave to appeal against conviction is struck from the roll.

2 The appeal against sentence is dismissed.

F KATHREE-SETILOANE
JUDGE OF APPEAL

[10] *S v Zinn* 1969 (2) SA 537 (A) 540G-H.

Appearances

For the appellant:	F Roets
Instructed by:	Krause Attorneys Inc, Johannesburg
	Honey & Partners Inc, Bloemfontein
For the respondent:	AG Janse van Rensburg
Instructed by:	Director of Public Prosecutions, Pretoria
	State Attorney, Bloemfontein.