

SUPREME COURT OF APPEAL

OF SOUTH AFRICA

MEDIA STATEMENT – DPP, WESTERN CAPE V KILLIAN

FROM: The Registrar, Supreme Court of Appeal

Date: 30 November 2007

Status: Immediate

Today the Supreme Court of Appeal upheld the appeal of the Director of Public Prosecutions against an order of the Cape High Court which set aside the convictions and sentences of Paul Lawrence Killian of Cape Town on various regional court charges arising out of a failed property acquisition scheme in the Paarl area. Killian lodged an appeal which is yet to be heard. He also brought a review application, alleging that his trial was fundamentally unfair, amongst other reasons because the same person who prosecuted him, had interrogated him at an earlier inquiry under the now repealed Serious Economic Offences Act. By law he was compelled to testify at the inquiry and also could not rely on the right against self-incrimination. The High Court decided the review in his favour, holding that it was unfair for the prosecution to possess the inquiry record and for the prosecutor to have been the interrogator at the inquiry.

The Supreme Court of Appeal decided that the trial was not unfair in either respect. Firstly, the statute governing the inquiry forbade direct use

of the inquiry evidence in a subsequent criminal trial and Constitutional Court jurisprudence laid down that derivative use of the inquiry evidence was subject to the control of the criminal court which would itself decide on the fairness of such use. In Killian's case there was neither direct nor derivative use of the inquiry record.

As to the dual role of the prosecutor, the court of appeal held that this was not an unfairness in itself and had not been objected to at any time in the trial. It had also not been shown that the prosecutor had any specific advantage which another prosecutor would not have had.

The High Court should therefore have dismissed the review.