

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 30 May 2008

Status: Immediate

I E STOKES v THE STATE

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.

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The Supreme Court of Appeal today partly upheld and partly dismissed an appeal by the appellant against a judgment in the Durban and Coast Local Division of the High Court in terms of which the court a quo dismissed an application by the appellant for an order to the effect that the State may not prosecute him in respect of a charge of theft and a charge of fraud alternatively theft.

The appellant used to practice as an attorney in South Africa until 2 November 2000 when he left South Africa and took up residence in the United States of America. Shortly after he had left South Africa several people laid criminal charges against him as a result

of which the Government of the RSA initiated steps to have him extradited. As a result he was provisionally arrested by the US authorities but before a formal request for his extradition had reached the US authorities he waived his rights to object against his extradition and asked that his return, in custody to the RSA be expedited. He was thereupon surrendered to the RSA.

Back in the RSA the appellant was charged with theft (count 1) and three counts of fraud alternatively theft (counts 2, 3 and 4). The appellant objected to these charges on the ground that, in terms of the Extradition Act, he could be charged only with offences in respect of which his extradition had been sought. The court a quo upheld his objection in respect of charges 3 and 4 but not in respect of charges 1 and 2.

On appeal the appellant submitted that in order to determine in respect of which offences his extradition was sought one had to analyse the documents which were prepared with a view to a formal application for his extradition, ie the documents that never reached the US authorities and had not been disclosed to the appellant at the time when he waived his rights. The SCA held that these documents were irrelevant. It held that the US was advised that the extradition of the appellant was sought in respect of the offences mentioned in the application for provisional arrest, the appellant waived his rights on that basis and the US surrendered him to the RSA on the strength of that waiver. Those were the offences in respect of which the appellant could be prosecuted and neither the US nor the appellant could have any complaint about such a prosecution. The question that had to be decided was whether the offences alleged in counts 1 and 2 of the indictment were the offences in respect of which the appellant's extradition was sought in terms of the application for his provisional arrest. Upon an examination of the application the court concluded that the appellant's extradition had been sought in respect of theft as alleged in count 1 and in the alternative to count 2 but not in respect of fraud as alleged in count 2.