



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

Date: 1 December 2009

Status: Immediate

*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.*

**J P C MOSTERT SNR & ANOTHER v THE STATE**

The two appellants, farmers who irrigate from the Lomati River, were convicted in the Magistrate's Court at Malelane on charges of fraud and theft as well as various contraventions of the National Water Act 36 of 1998. They appealed to the High Court, Pretoria. That court held that the state had proved only two contraventions under Act 36 of 1998 and that it had not been competent for the state to charge the appellants with fraud and theft as the legislature had intended to exclude common law offences.

In a further appeal, the Supreme Court of Appeal today ruled that the high court had erred in regard to this latter issue and that the state had been entitled to charge the appellants with common law offences. The court found that the appellants had been guilty of fraud and two of the statutory offences with which they had been charged that the state had failed to prove that they had taken water to which they had not been entitled. The court expressed the view, however, that in law a person could probably not be guilty of the theft of water out of a river.