



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: 28 November 2014
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.

HENDRIK FREDERICK DELPORT & OTHERS

v

THE STATE

The Supreme Court of Appeal today delivered a judgment in which it gave its reasons for striking this appeal from the roll on 26 November 2014. The effect of the order is that the appellants are not entitled to appeal an order from the high court (sitting as a court of appeal) remitting the matter to a magistrate for a criminal trial to proceed until completion.

The matter has a long history. The appellants were among thirteen accused arraigned before a regional magistrate on multiple charges of fraud and racketeering. The main allegation against them is that they had defrauded SARS of approximately R264 million.

They pleaded not guilty. The trial began in July 2004 and ran for five years. The

State called many witnesses. At the end of the State case, the accused applied to be discharged on the ground that there was insufficient evidence against them. The magistrate discharged five of them, which meant that the trial had to proceed against the other eight.

In November 2011, seven years into the trial the appellants applied to be acquitted on the ground that the two prosecutors were not properly appointed in terms of s 38 of the National Prosecuting Authority Act 32 of 1988. The magistrate upheld their argument and acquitted all, except one of them, who had not been party to this dispute.

The State appealed the decision and the high court set aside the magistrate's decision. It held that the National Prosecuting Authority had substantially complied with the Act in appointing the prosecutors to conduct the prosecution. It therefore ordered that the trial continue before the same magistrate. But the appellants then appealed to the SCA against the decision of the high court.

The SCA declined to entertain the appeal. It found that the appeal only had the effect of delaying the trial, which had now run for more than ten years. It held that even if the appointments of the prosecutors were irregular this did not justify the acquittal of the appellants if the trial had not otherwise been conducted unfairly. It said that considerations of convenience, delay and prejudice to both the State and the appellants did not warrant the hearing of a piecemeal appeal. The trial shall therefore have to proceed and continue until it is completed.