



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Molaudzi v The State**

**CCT 42/15**

**Date of judgment: 25 June 2015**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today, the Constitutional Court handed down a judgment in a matter concerning the doctrine of *res judicata*, the principle that once a matter has been judged on the merits it may not generally be pursued by the same parties, and this Court's power to reconsider a previous final order.

The applicant, Mr Molaudzi, together with seven others, were accused of shooting and killing a warrant officer in Mothutlung in 2002. They were charged with murder, robbery with aggravating circumstances and unlawful possession of firearms and ammunition. The North West High Court, Mafikeng, found all the accused guilty and sentenced them to life imprisonment.

Seven of the accused appealed to the Full Court of the High Court. The Full Court held that there was sufficient evidence implicating all of the accused and confirmed their convictions and sentences. Several of the accused unsuccessfully applied for leave to appeal to the Supreme Court of Appeal.

In 2013, Mr Molaudzi applied for leave to appeal to this Court (first application). The application was dismissed because it was based on an attack on the factual findings of the High Court, thus not raising a constitutional issue and engaging this Court's jurisdiction.

In 2014, two of Mr Molaudzi's co-accused before the High Court, Mr Mhlongo and Mr Nkosi, applied for leave to appeal against their convictions and sentences (related cases), but raised constitutional arguments regarding the evidence admitted against them. They challenged the constitutional validity of admitting out-of-court statements of an accused as evidence against a co-accused in a criminal trial. This Court considered this

to be a meritorious constitutional issue which engaged its jurisdiction and granted them leave to appeal. The Court overturned their convictions and ordered their immediate release in an order dated 25 March 2015.

In 2015, Mr Molaudzi brought another application for leave to appeal to this Court (second application), to have his convictions and sentences set aside, in which he raised the same arguments advanced in the related cases. He maintained that the case was not *res judicata* because the second application raised new constitutional arguments which were not previously before the Court. The State did not oppose the application and supported the relief sought.

In a unanimous judgment, Theron AJ found that while, in the first application, this Court was not called upon to adjudicate the substantive constitutional challenges now raised, the second application was still *res judicata* as the Court had already made a final judgment on the merits of the case. However, the Court found that where significant or manifest injustice would result if a final order stands, the doctrine ought to be relaxed in a manner which permits this Court to revisit its past decisions in accordance with its inherent powers and constitutional mandate to develop the common law. This requires rare and exceptional circumstances, where there is no alternative effective remedy.

Like Mr Mhlongo and Mr Nkosi, Mr Molaudzi's conviction was based primarily on the out-of-court admissions of his co-accused, which this Court found to be inadmissible in the related cases. It would be a grave injustice if Mr Molaudzi was not afforded the same relief as Mr Mhlongo and Mr Nkosi in circumstances where he was similarly situated and had failed to raise the same constitutional arguments in his first application, which may have been due to his lack of legal representation.

The Court found that these are exceptional circumstances and it is in the interests of justice to fashion an appropriate remedy. The Court concluded that, without the out-of-court admissions of his co-accused, the evidence as a whole was insufficient to support Mr Molaudzi's conviction. In the result, the appeal was upheld and his convictions and sentences were set aside. The Court directed that Mr Molaudzi be released from prison immediately.