



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 6 May 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*The DPP Western Cape v Bongo (990/2022) [2024] ZASCA 70 (6 May 2024)*

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Today the Supreme Court of Appeal (SCA) handed down judgment setting aside and remitting for trial *de novo*, an appeal against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

The respondent was arraigned in the high court on one count and two alternative counts of corruption. The State alleged that the respondent had committed the crime of 'corrupt activities relating to public officers' under the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA).

Specifically, the State alleged that on 10 October 2017, the respondent wrongfully and intentionally, either directly or indirectly, offered gratification to a Senior Manager of Legal and Constitutional Services in the Office of the Speaker of Parliament. The State claimed that the respondent's intention was to induce the Senior Manager to fake illness, take sick leave, or otherwise assist the respondent in delaying or stopping a parliamentary inquiry into the affairs of Eskom.

The respondent pleaded not guilty to all charges and submitted a written plea explanation denying the allegations.

At the close of the State's case, the respondent applied for a discharge in terms of section 174 of the Criminal Procedure Act 51 of 1977 (CPA).

The high court granted the respondent's application and discharged him. The State then filed an application to reserve six questions of law for consideration by this Court under section 319 of the CPA. The high court dismissed the State's application without providing reasons.

The State appealed the high court's refusal to reserve the questions of law. The SCA granted the State leave to appeal and considered the merits of the reserved questions of law.

The SCA found that the high court made several material misdirections on questions of law. Specifically, the SCA found that the high court erred in its assessment of the evidence presented by the State, which this Court found could have led a reasonable court to convict the respondent. Further, the SCA found that the high court misconstrued the elements of the offences of the respondent which he was charged with, particularly the crime of 'corrupt activities relating to public officers' under PRECCA.

The SCA emphasised that the question of 'whether the proven facts in a particular case constitute the commission of a crime' is a question of law, not a factual inquiry. The high court's findings on the probabilities of a bribe being offered were based on a misunderstanding of the legal elements of the offences.

The SCA also found that the high court erred in its use of the respondent's previous consistent statement, made in separate parliamentary ethics proceedings, to accept his version and reject the State's case. The SCA held that the high court's reliance on this previous statement was a material misdirection on a question of law. The SCA emphasised that the admissibility and weight to be given to a previous consistent statement is a legal issue, not a factual one.

The SCA found that the high court made several mistakes of law that warranted the reversal of the discharge order and a retrial. The SCA determined the reserved questions of law in favour of the State. As a result, the SCA set aside the discharge order, and remitted the matter for trial *de novo* before a differently constituted court.

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