



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: 30 January 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

Muravha v Minister of Police (179/2022) [2024] ZASCA 11 (30 January 2024)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Limpopo Division of the High Court, Polokwane (high court). The order of the full court was set aside and replaced with one ordering that the trial should start *de novo* before another presiding judge.

The appeal revolves around a lost record of a civil trial. The record of the trial proceedings became lost in its entirety and was not reconstructed at the time of this appeal. However, from the papers filed it became evident that the matter concerned a claim by a member of the public who instituted proceedings against a member of the South African Police Service after he was shot with a rubber bullet. After hearing the matter, the trial court considered the probabilities and dismissed the claim. Leave to appeal to the full court was granted. However, notice to appeal was only filed 17 months after leave had been granted and other necessary documents had only been filed more than two and a half years later. Notwithstanding the missing record, the full court heard the appeal, and dismissed it.

Upon appeal to this Court, the matter was enrolled for appeal on 4 April 2023. However, because uncertainty reigned over what necessary steps were taken to ensure the record was sufficiently reconstructed, this Court postponed the matter *sine die* and directed the parties to take necessary steps to ensure the record is sufficiently reconstructed. The matter was re-enrolled for hearing on 3 November 2023. A report was submitted detailing the steps taken to comply with the Court's previous instructions. This Court was not satisfied with the steps taken and held, *inter alia*, that it is implausible for neither the appellant nor the respondent to have any notes detailing the trial proceedings. A reasonable legal practitioner for either of the parties should have known that its client intended appealing the matter – the safe and responsible thing would have been the safekeeping of trial notes for use during an appeal. This Court held that a failure to do so amounted to a dereliction of duty.

Upon an examination of the proceedings, this Court came to the conclusion that the full court evidently laboured under the impression that the facts of the matter were not in dispute. However, before this Court, the appellant maintained that the trial court misdirected itself on the facts. It has always been the position that where a challenge presents itself regarding factual findings on a trial record, an appeal court may not interfere unless it can be established that the trial court misdirected itself on the facts. However, to this end this Court required the trial record to come to a conclusion on the disputed issues. The full court was required to look at the record of the proceedings in order to evaluate whether the trial court misdirected itself, but it relied on the trial court's summary of the facts and performed its duties on the basis that the appellant and respondent did not seem dissatisfied with the trial court's summary of the facts. As a result, a serious misdirection on the part of the full court occurred. This Court found that the full court wrongly decided the matter without properly examining the record of the trial proceedings. This impacted the rights of the appellant to a fair trial.

In the result, the SCA upheld the appeal and replaced the order of the full court with one remitting the matter to the trial court to start de novo before another presiding judge.

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