



**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:** 10 February 2021

**Status:** Immediate

***Timothy Gordon Marsland v The Additional District Court Magistrate,  
Kempton Park and Another (162/2020) [2021] ZASCA 14 (10 February  
2021)***

*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.*

The Supreme Court of Appeal (the SCA) today dismissed an appeal against the decision of the Gauteng Division of the High Court, Johannesburg, (the high court) which refused the appellant's application for the review and setting aside of the decision of the first respondent, the Additional District Court Magistrate, Kempton Park, refusing him bail on the basis that his extradition request had been received by South Africa.

The appellant, Mr Timothy Gordon Marsland, who has dual citizenship in South Africa and the United Kingdom, and residency in Botswana was arrested at O R Tambo International Airport whilst *en route* to Germany on

12 July 2019 on a Red Notice request issued by Interpol. In the Red Notice it was alleged that the appellant had laundered funds in the sum of BWP 200 000 from Botswana Public Office Fund whilst he was a director of Capital Management Botswana, which was entrusted to manage and invest these funds. He was also accused of attempting to obtain, by false pretences, an amount of BPW71 000 000 from the First National Bank of Botswana.

The appellant's application for bail was refused by the first respondent. The prosecutor, the second respondent, thereafter handed the first respondent with three documents, namely the *Note Verbale* from Botswana dated 17 July 2019, requesting the extradition of the appellant; a letter from the Department of International Relations and Co-operation (DIRCO), dated 19 July 2019, addressed to the Director General, Department of Justice and Constitutional Development (the Department) enclosing the *Note Verbale*; and a letter from the office of the Director General of the Department, dated 12 August 2019, addressed to the National Director of Public Prosecutions (the NDPP) enclosing the *Note Verbale* as received from DIRCO.

When the prosecutor made an application for the matter to be transferred to another court so that an enquiry in terms of s10 of the Extradition Act 67 of 1962 (the Act) could be held, the appellant opposed the application on the ground that no extradition application was pending before any court in South Africa. The first respondent held otherwise and dismissed that application. Dissatisfied with that ruling, the appellant launched review proceedings in the high court, challenging the first respondent's decision. That application was also dismissed by the high court and so was his application for leave to appeal. His appeal is with this Court's leave.

Before the SCA, the appellant argued that his detention was unlawful as the Minister of Justice had not received an extradition request from Botswana as contemplated in Article 6 of the Southern African Development Community (SADC) Protocol on Extradition. Also, the Minister had failed to issue a notice in terms of s 5(1)(a) of the Act. Furthermore, so went the argument, as a period of 30 days had lapsed since his arrest and no extradition request had been received, he ought to be released in accordance with article 10(5) of the Protocol. The SCA held that the *Note Verbale*, which was in writing, constituted a request by Botswana for the extradition of the appellant, as envisaged in the Act and the Protocol. As the *Note Verbale* was received by DIRCO, and forwarded to the Department, this meant that the request was transmitted through the diplomatic channel and received by the Ministry of

Justice as required by Article 6 of the Protocol. The SCA further held that as the appellant's arrest was effected in terms of s 5(1)(b), it was not necessary for the Minister to issue a notice in terms of s 5(1)(a). The appeal was therefore dismissed with no order as to costs.