



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 18 June 2020

**STATUS** Immediate

***Director of Public Prosecutions: Limpopo v Molope and Another (Case no 1109/2019) [2020] ZASCA 69 (18 June 2020)***

*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.*

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant, the Director of Public Prosecutions: Limpopo (the State), against the decision of the Limpopo Division of the High Court (the high court).

The respondents, Lasabatha Lucas Molope and Jack Letsoalo, were arraigned in the high court on two counts of kidnapping and two counts of murder in furtherance of a common purpose. The charges pertained to a series of incidents that involved mob justice, which culminated in the death of two young men. At the end of the State's case, the respondents applied to be discharged in terms of s 174 of the Criminal Procedure Act 51 of 1977 (CPA). The high court found 'material contradictions' in the State's case and thus ordered the discharge of the respondents on the two main charges of kidnapping and murder. This, despite having found that there was 'sufficient evidence upon which a court may convict on the alternative verdict of assault with intent to do grievous bodily harm against both respondents'. The high court went on to convict the respondents of the crime of assault GBH. The State then reserved two questions of law in terms of s 319 of the CPA, withdrawing one during the hearing of the appeal.

The issue before the SCA was whether the question of law was properly reserved. The SCA, held that in a reservation of a question of law the following three requirements ought to be met: first, the question must be framed accurately leaving no doubt what the legal point was; second, the facts upon which the point hinges must be clear; and third, the facts should be set out fully in the record together with the question of law.

The SCA held that in the present case, there were serious shortcomings in the State's application. It was clear that none of the requirements of s 319 of the CPA had been complied with by both the high court and the State. The high court did not frame a question of law in its judgment in the s 319 application for the consideration of this Court, nor did it record the factual findings on which the purported point of law was dependent. Furthermore, the judgment of the trial court was unclear on important aspects. The State accepted that it had not properly formulated the question of law as required by the provisions of s 319.

The majority (Saldulker and Dlodlo JJA) held that the State and the high court had not properly formulated the question of law, and the appeal was dismissed. In a dissenting judgment Cachalia JA upheld the appeal, even though there were shortcomings in the formulation of the point of law, on the basis that it was possible to glean the factual findings of the trial court which gave rise to the dispute over the point of law.

The majority held further that not only was the question of law not accurately framed by the trial court, and the facts upon which the point hinged not clear, but the State also did not properly formulate the question of law. The SCA went on to state that implicit in the provisions of s 319 of the CPA was the prerogative and the duty of the 'first mentioned court' (the trial court), the high court in this instance, to properly and accurately frame the question of law for consideration by a court of appeal. This Court, being a court of appeal was in no position to formulate the question of law, and then answer it as being properly reserved in favour of the State. And even if it could, there was no factual basis on which to determine the reserved question. More pertinently, to do so, would set a precedent for future defective applications such as these. In the circumstances, the appeal fell to be dismissed.