



**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:** 18 OCTOBER 2021

**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*

*Minister of Police v Khoeli (241/2020) [2021] ZASCA 146 (18 October 2021)*

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against a decision of the Free State Division of the High Court, Bloemfontein (the high court).

The issues before the SCA were: whether the respondent's cattle could be forfeited to the State without affording the respondent the opportunity to be heard or make written submissions on the issue of the forfeiture; whether such failure to afford him an opportunity to be heard was arbitrary; and whether the decision to forfeit the cattle to the State was contrary to the provisions of s 32 of the CPA and thus unlawful.

On 15 May 2017, 44 cattle branded with the animal identification mark registered in the name of Mr Khoeli, the respondent, were seized by Captain Wessels in Hobhouse, Free State. The seizure was in terms of s 20 of the Criminal Procedure Act 51 of 1977 (the CPA). The next day, the respondent and two others were arrested and charged for contravening s 32(1)(m)(iii) read with s 6(1)(a) of the Animal Diseases Act 35 of 1984 (the Diseases Act). It was alleged that the respondent and his companions imported into or conveyed in the Republic of South Africa 44 cattle found in their possession without the requisite permit prescribed in terms of s 6(1)(d) of the Diseases Act. On 17 May 2017, the respondent paid an admission of guilt fine in terms of s 57A of the CPA. On 30 May 2017, without any notice to the respondent, the SAPS declared all 44 cattle forfeited to the State. Unaware that the cattle had in the interim been declared forfeited to the State, the respondent sought and obtained an order in the magistrate's court in terms of which the cattle were restored to him. On learning of this order, the SAPS challenged the validity thereof in the high court. On 6 November 2017, the high court (per Reinders and Naidoo JJ) reviewed and set aside the magistrates' court order on the basis that the magistrates' court did not have jurisdiction to entertain the matter.

On 7 November 2017, pursuant to the high court's order, the SAPS again declared the 44 cattle forfeited to the State. On the same day 42 of the cattle were sold by public auction for R286 900. It was common cause between the Minister and the respondent that two of the 44 cattle died before the public auction, whilst in the custody of the SAPS. Dissatisfied with the forfeiture order and the consequent sale of the cattle, the respondent instituted proceedings in the high court for an order reviewing and setting aside the decision of the SAPS. The high court, per Mbhele and Mhlambi JJ, declared the decision of the SAPS, taken on 07 November 2017, declaring the respondent's 44 cattle forfeited to the State, unlawful and set it aside. The high court upheld the respondent's application on the basis that the SAPS made fundamental errors on the material aspects.

The SCA held that section 32 clearly contemplates the applicability of the *audi alteram partem* rule, a fundamental principle of administrative justice as decreed by s 33 of the Constitution. The SCA held further that even where the article was used in the commission of a crime, an enquiry should still be conducted before a declaration to forfeit an article to the State is made; the accused must be afforded an opportunity to lead evidence; the court must consider the nature and value of the item and the role played by the item in the commission of the offence. The SCA therefore held that the approach for which the Minister contends, namely declaring a seized article forfeited to the State without any reference to interested parties, is antithetical to the fundamental principle of the *audi alteram partem* rule.

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