



## 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:** 7 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*

*The National Director of Public Prosecutions (Ex Parte Application) (Case no 669/2020) [2021] ZASCA 142 (7 October 2021)*

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Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant and set aside the order of the high court.

The case concerned an appeal against an order made by Roelofse AJ in the Mpumalanga Division of the High Court, Mbombela (the high court), striking from the roll an *ex-parte* application in terms of s 38 of the Prevention of Organised Crime Act 121 of 1998 (POCA) for a preservation order. The practice directives required an applicant in an urgent application to set out explicitly the circumstances which render the matter urgent. The practice directive provided that should the directives regarding urgent applications not be adhered to, the application will be struck off the roll. The core issue in this appeal was whether the appellant, the National Director of Public Prosecutions (the NDPP), was required, when bringing an application in terms of s 38 of POCA, to make out a case of urgency in the founding affidavit, before the merits of the matter may be determined.

The SCA held that this court had in *National Director of Public Prosecutions* [2018] ZASC 86; 2018(2) SACR 176 (SCA) (Ramadhani) decided an appeal against an order of the Mpumalanga Division of the High Court striking from the roll an *ex parte* application for a preservation order, and held there that an existing provision of a practice directive in that division governing *ex parte* POCA applications was inconsistent with Uniform Rule 6(4)(a) and with s38 of POCA. The SCA held that this court had explained in *Ramadhani* how a practice directive stood in relation to a statute. The SCA found that the high court, erred in the following respects. Firstly, in not finding that by its very nature, an application for a preservation order is inherently urgent, and that the appellant was entitled, as a matter of law, to approach the court *ex parte*, and by way of notice provided for in rule 6(4)(a), without having specifically to make out a case for urgency. Secondly, the high court erred in treating the practice directive as if it has statutory force that overrides the provisions of the POCA and the Uniform Rules.

The SCA held that the high court practice directives are incompatible with the nature of POCA applications and rule 6(4)(a). Practice directives provide essential guidance for the daily functioning of the courts, and may not

derogate from legislation, the common law, or rules of court that have obligatory force. Practice directives should not place obstacles in the way of achieving the objects of a statute. As the court below misdirected itself in these respects, when it struck the matter from the roll, the SCA found that the appeal must succeed.

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