



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 March 2010

Status: Immediate

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

On 12 March 2010 the Supreme Court of Appeal handed down judgment in *Burger v The State* in terms of which it overturned a decision of the Pretoria High Court convicting each of three policemen of murder and kidnapping.

During May 2000 the three policemen in question had collected Mr Sandy Botomane from his home in Atteridgeville informing him that they wanted to question him about a recent theft at Putco and instructed him to accompany them. Shortly thereafter they sought his assistance to trace another suspect. According to the policemen he volunteered to do so and led them to an address in Sebokeng where, during the early morning hours of 23 May 2000, he fled.

Approximately 26 hours after Mr Botomane had been taken from his home by the police his body was found on the N1 national highway near Vanderbijlpark, during the early morning hours of 24 May 2000, in circumstances that appeared as if he had been the fatal victim of a hit-and-run motorist.

The Pretoria High Court took into account that the policemen had in many respects been unsatisfactory witnesses. It held this against them and after considering the

evidence concluded they were guilty of murdering Mr Botomane. In respect of the kidnapping charge the court below took the view that the police had deceived Mr Botomane, the deceased, into accompanying them and that they were thus guilty of kidnapping him.

This court concluded that the court below had not properly taken into account that the uncontested medical evidence was to the effect that the injuries sustained by the deceased were consistent with those that might have been sustained in a hit-and-run collision as well as with him being killed elsewhere and left injured or dead on the national highway. Another factor not taken into account were the threats from other quarters against the deceased's life, which emanated from persons involved with an illegal ticket machine that had been used at Putco and that had been found in the deceased's cubicle. Furthermore, there was no evidence of any contact between the deceased and the police during the intervening period.

This court held that the high court had failed to have regard to the rules in relation to the acceptance of circumstantial evidence and had erred in its conclusion in relation to the murder charge. In relation to the kidnapping charge the available admissible evidence indicated that the deceased had volunteered to accompany the policemen. The conviction on the kidnapping count was therefore not sustainable.

This court upheld the appeal by the policemen and set aside their convictions and the related sentences of life imprisonment.

This court noted with concern that some of the police investigation-methods used were reminiscent of the apartheid era and inconsistent with constitutional values. It expressed disquiet about the blurring of lines in the present case between private and police investigations and the use of police resources by private investigators.