IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

APPEAL CASE NO: A14/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED: YES/NO

[redacted] 05/03/2026

SIGNATURE DATE

In the matter between:

DIRECTOR OF PUBLIC PROSECUTIONS **APPELLANT**

AND

ZWANDA TSHIVHASE **1ST RESPONDENT**

VHUTALI MANTSHA **2ND RESPONDENT**

Delivered: **05 March 2026**

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 05 March 2026 at 16:00.

Date heard: **21 NOVEMBER 2025**

Coram: **NAUDE-ODENDAAL J *et* NGOBENI J**

JUDGMENT

NGOBENI J

[1] This is an appeal by the state (appellant) in terms of provisions of section 310 of the Criminal Procedure Act[1] (CPA) against the decision by the learned Regional Magistrate P.V. Mudau of the Regional Division of Limpopo, sitting in the Magistrates' Court of Giyani (court *a quo,* trial court or presiding officer) that was granted on 02 May 2024, of acquitting the first and second respondents for the charges they were facing. The basis of the appeal by the state is that the trial court erred on the question of law. The first and second respondents (respondents) in this appeal, who are traffic officers, appeared as accused persons before the

[1] 51 of 1977.

court *a quo* on a charge of corruption for directly or indirectly accepting a gratification in order for them not to act according to their legal duty of enforcing road traffic rules, or alternatively that they received unauthorised gratification whilst in an employment relationship with the Department of Transport in order for them not to exercise, carry out or perform their powers, duties or functions within the scope of their employment.

[2] The respondents were charged in the court *a quo* for contravening the provisions of sections 4 and 10 of the Prevention and Combating of Corrupt Activities Act[2] (PRECCA). The said section 4 deals with offences in respect of corrupt activities relating to public officers, and section 10 deals with offences of receiving or offering of unauthorised gratification by or to a party to an employment relationship. The terms or elements of the main count and that of the alternative count are not much different from each other. In the court *a quo* the first respondent was accused number 1, and the second respondent was accused number 2. In this appeal as well where necessary for the sake of context they will be referred to as accused 1 and accused 2 as they were referred to in the court *a quo*.

[2] 12 of 2004.

[3] The appeal is opposed by the respondents. The respondents argue that the court *a quo* never grappled with the terms '*offer*' and '*acceptance*'. The evidence of the state, according to their submission could not secure them a conviction because the evidence of Superintendent Michael Mavungu (agent) was contradictory, and the audio and video footage (footage) that was presented to the court by the state fell short of corroborating the evidence of the agent.

[4] There are two grounds of appeal or questions of law which the appellant raised, and I will for the sake of completeness paraphrase them as follows:

(i) whether the trial court applied its mind correctly to the elements of the offence of corruption in terms of section 4 of PRECCA. The appellant further alleges that the court *a quo* fundamentally misunderstood the applicable legal principles, because the crime of corruption is complete once an offer is made to any person or an official to perform a prescribed act for gratification even though there was no *quid pro quo* (something for something) agreement or whether payment was made or not.

(ii) whether the court *a quo* applied the legal principles correctly when assessing the totality of the evidence of the state and the defence. The respondents said that they were joking with the tasked agent when demanding gratification. The court *a quo* in its judgment said that the respondents never asked for money, contrary to what the respondents themselves said. The court *a quo* in its judgment said that the video is not clear and the voice is not clear to the ear, but yet in its judgment on the application for a discharge in terms of section 174 of the CPA, the court *a quo* said that two traffic officers are seen from the footage and some of the words are clear, and some are not clear.

[5] The appellant further submits that the decision to acquit the respondents should be set aside and be substituted with a conviction on the main count. The state in the court *a quo* charged the respondents with one count of contravening the provisions of section 4(a) (I take it that it should have been section 4(1)(a)), read with sections 1,2,4(2),24,25,26(1)(a) of the PRECCA, in the alternative the respondents were charged with contravening the provisions of section 10(a) read with sections 1,2,4(2),24,25,26(1)(a) of PRECCA, on allegations that they received unauthorised gratification being parties to an employment relationship. The allegation by the state is that the two respondents are employed as traffic officers and on 21 September 2018, they were working on the R523 road in the Regional Division of Limpopo as law enforcement officials, and they directly or indirectly unlawfully

demanded and accepted a gratification of an amount of two hundred rand (R200-00) in cash from Michael Avhapfani Mavhunga (complainant or agent), who had failed to comply with the speed limit displayed on the road sings, which amounted to the violation of their legal duty by failing to issue a traffic summon to the complainant in furtherance of a common purpose.

[6] In issue in this appeal between the state and the respondents is whether on the available evidence that was presented to the trial court, whether the trial court was able to properly apply its mind on interpreting the elements of the offence of corruption as set down in section 4 of PRECCA. The state submits that the trial court should have considered that the crime of corruption is complete once an offer is made to a person to perform a prescribed act for gratification. The definition of gratification, although defined in section 1 of PRECCA, was well summarised in the case of *The DPP, Western Cape v Bongo*[3], where the court said that the definition of gratification purposely casts the net wide and includes, inter alia, money, whether in cash or otherwise, donations, loans, the avoidance of a loss or liability, and any valuable consideration or benefit of any kind.

[3] (990/2022) [2024] ZASCA 70 (6 May 2024).

[7] The background of this case in the court *a quo* is that there was an application that was made in terms of provisions of section 252A of the CPA, on the basis that there were complaints in the Vhembe area about illegal activities along the roads by traffic officials. There was an operation that was initiated by the Road Traffic Management Corporation (RTMC) and the Director of Public Prosecutions (DPP) approved the operation, for the setting up of traps. It appears from the record of the court proceedings that there was no issue with regard to the application procedures and the operation of the trap in as far as this case is concerned, and moreover, that is not the issue in this appeal.

[8] The provisions of section 310(1) and (2) of the CPA reads as follows:

310 Appeal from lower court by prosecutor

"*(1) When a lower court has in criminal proceedings given a decision in favour of the accused on any question of law, including an order made under section 85 (2), the attorney general or, if a body or a person other than the attorney general or his representative, was the prosecutor in the proceedings, then such other prosecutor may require the judicial officer concerned to state a case for the consideration of the provincial or local division having jurisdiction, setting forth the question of law and his decision thereon and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law.*

(2) When such case has been stated, the attorney-general or other prosecutor, as the case may appeal from the decision to the provincial or local division having jurisdiction.

(3) The provisions of section 309(2) shall apply with reference to an appeal under this section.

(4) If the appeal is allowed, the court which gave the decision appealed from shall, subject to the provisions of subsection (5) and after giving sufficient notice to both parties, reopen the case in which the decision was given and deal with it in the same manner as it should have dealt therewith if it had given a decision in accordance with the law as laid down by the provincial or local division in question.

(5) In allowing the appeal, whether wholly or in part, the provincial or local division may itself impose such sentence or make such order as the lower court ought to have imposed or made, or it may remit the case to the lower court and direct that court to take such further steps as the provincial or local division considers proper".

[9] Part 2 of PRECCA deals with offences in respect of corrupt activities relating to specific persons, and section 4 thereof reads as follows:

Offences in respect of corrupt activities relating to specific persons

"4. (1) Any-

(a) public officer who, directly or indirectly, accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,is guilty of the offence of corrupt activities relating to public officers.

(2) (a) – (e) ...

(f) showing any favour or disfavour to any person in performing a function as a public officer;

(g) – (h) ... "

[10] "'Public officer' is defined in PRECCA as any person who is a member, an officer, an employee or a servant of a public body and includes-

(a) any person in the public service contemplated in section 8(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

(b) any person receiving any remuneration from public funds; or

(c) ... "

[11] At the outset of the evaluation of what is before this court, and having read the transcribed record of the proceedings in the court *a quo*, I find it apposite that I firstly deal with court etiquette that was displayed during the conduct of the proceedings in the court *a quo,* which was not in line with the decorum that is expected to be maintained at all times in the conduct of the court proceedings. It is therefore necessary to remind officers of the court that upholding the decorum of the court is of utmost importance, because if those that are observing do not see that discipline displayed by the role players in a court environment, they are likely not to have trust and confidence in the process. It is therefore of utmost importance that role players must always have that in mind when they perform their court functions. It is not necessary for a cross examiner to

intimidate a witness in any manner in order to derive information from that witness. Witnesses in our courts must be at ease when they testify because they are there to help the court to come to a just adjudication of a case[4].

[12] Witnesses cannot be laughed at or intimidated during their testimony, as is apparent from the transcribed record in the court *a quo* from what transpired as the following took place:

"MR MAKHERA: Your Worship, I just want to object to what my colleague is doing, ridiculing the witness, laughing at him. Your worship, that is not proper. You cannot ask him and laugh at him at the same time.

COURT: Yes Advocate Muliwa, how do you respond to the objection?

PROSECUTOR: I was not aware that I am laughing at the witness Your Worship. Maybe just because open my mouth [intervene].

COURT: But even if you were aware, even if you were not aware, were you laughing at him or not?

PROSECUTOR: No, there is no need for me to, there is no need for me to do that Your Worship.

COURT: So, are you disputing the fact that were laughing at him?

PROSECUTOR: No, I could not dispute that Your Worship.

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[4] S v Meiring [2018] ZAGPJHC 587 (GJ), R v Silber 1952 (2) SA 475 (A), S v Solomons (4249/2003) [2003] ZAWCHC 68; 2004 (1) SACR 137 (C) (11 December 2003).

COURT: So, you concede that you laughing?

PROSECUTOR: I am not conceding.

COURT: Advocate Muliwa, I expect you to say something that is factual because you are not taking a stand now.

You say, you were not aware that you were laughing, but you also say, you were not laughing, but in any way, remember, as a court seated here on the bench, I am observing everything. I saw you laughing.

So, will you please resist for doing that. The objection is sustained. Advocate Muliwa, please resist from laughing at the witness.

It will amount to you intimidating the witness.

PROSECUTOR: As the court pleases.

COURT: I also have to mention the following Advocate Muliwa, I see that at times, when you are putting the, the various question to the witness, at times, you raise your voice. Please, don't raise your voice towards the witness"

[13] If I have to use a figure of speech about the way in which the proceedings were conducted in this case in the court *a quo*, I can say that it is if they were travelling on a 'bumpy road'. It took so much time just for the prosecutor and the presiding officer to find each other as to why was the audio and video footage supposed to be played in court, how that was supposed to be presented as evidence, and how the explanation of what would be appearing on the audio and video footage would be

explained or presented to the court. That debate is covered in 18 (eighteen) pages of the court record, before the audio and video footage in question could eventually be played.

[14] The audio and video footage was firstly played without the witness who captured it clarifying what was depicted in the video, but later on he was recalled to come and clarify what was depicted there, what he could hear and what he could not hear. I believe that the court's time would have been saved had the witness testified about the footage from the outset, and I believe that it would even be easy to follow his evidence. It is clear from the court record though that there was no issue with regard to the admissibility of the footage[5] in the court *a quo* hence it was played in court.

[15] In this appeal the state made it clear from the outset that the basis of the appeal is that the trial court erred in law by misinterpreting the definition or the elements of the crime of corruption in relation to the facts of the case. The trial court has in terms of provisions of section 310 stated a case for consideration by this court, in which the presiding officer was

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[5] S v Ramgobin and Others 1986 (4) SA 117 (N), where the court held that for the video footage to be admissible, the state has to prove the following facts beyond reasonable doubt:

(a) Originality,
(b) That no interference had taken place,
(c) That they related to the incident in question,
(d) That the recording was faithful,
(e) That the identity of the speakers was identified,
(f) That the recordings were sufficiently intelligible.

required to state the question of law and his decision as raised by the state and his findings of fact in as far as they are material to the question of law.

[16] The sub-paragraphs in the stated case in terms of provisions of section 310 of the CPA (stated case) by the Regional Magistrate were not numbered, but instead bullets were used, and I will therefore for that reason refer to paragraph 4 which is the main paragraph on the factual findings and the question of law and it reads as follows:

4. FINDINGS ON THE QUESTION OF LAW AND THE COURT'S REASONS

" ...

The evidence did not establish that the two accused admitted that they accepted an amount of money from Mr Avhapfani Michael Mavhunga, the agent.

The audio and video recording footage played in the trial was not clear. The voices and images were not clearly audible and visible. Mr Mavhunga is not seen putting money under a stone. Neither money nor stone is seen in the footage.

Mr Avhapfani Michael Mavhunga, the agent was inconsistent as to who mentioned the R200-00 amount of money. He gave two versions in this regard.

There is a contradiction regarding Mr Avhapfani Michael Mavhunga's evidence and the contents of his written statement, relating to who between the two accused demanded money from him.

Mr Avhapfani Michael Mavunga, the agent, was a single witness regarding what happened between him and the two accused.

The audio and video recording footage played into record in the trial fell short of corroborating the evidence of Mr Avhapfani Michael Mavhunga, the agent.

The evidence adduced in the trial did not prove the guilt of the two accused beyond reasonable doubt".

[17] The starting point should be to understand the difference between the question of law and the question of fact. That distinction was also clearly encapsulated in the *DPP, Western Cape v Bongo* case, *supra,* by relying on the explanation from *Magmoed v Janse Van Rensburg and Others*[6] that the question as to whether the proven facts in a particular case constitute the commission of a crime is a question of law, but a question of law is not raised by asking whether the evidence establishes one or more of the factual ingredients of a particular crime, where there is no doubt or dispute as to what those ingredients are. That is precisely what the state in the case at hand alleges, that the court *a quo* on the proven facts failed to find that a crime was committed.

[6] 1993 (1) SACR 67 (A) at 94 a-c.

[18] It is trite that when a trial court evaluates evidence that is presented before it, that cannot be done in isolation, as all elements which points towards the guilt of the accused must be weighed against those that are indicative of his innocence, and the strengths, weaknesses, probabilities improbabilities on both sides must also be considered[7]. The court *a quo* was alive to what is required when one evaluates the evidence and even in its judgment referred to cases that deals with that aspect[8].

[19] As outlined in the stated case the court *a quo* ruled against the state because of the fact that the video was not visible enough to corroborate the version of the agent, and the agent in his evidence in chief said that accused number 1 is the one who asked for R200-00 whereas in the statement that he made to the police he said that accused number 2 is the one who asked for R200-00.

[20] It appears from the transcribed court record that the footage was on some parts not clearly visible and not clearly audible on some parts, as the Regional Magistrate correctly stated. It is however not denied by the respondents that they were at the scene that is depicted on the footage. On the evidence of the audio and video footage the court *a quo* in its

[7] S v Chabalala 2003 (1) SACR 134 (SCA), S v Singh 1975 (1) SA 227 (N), S v Van der Meyden 1999 (1) SACR 447 (W).
[8] *Ibid* footnote 7 on S v Chabalala, S v M 2006 (1) SACR 135 (SCA), Shackell v S 2001 (4) SALR 279 (SCA).

judgment states that accused 1 is visible, but the face of another person seated down is not visible.

[21] Accused 2 does not deny having been at the scene. He doesn't even deny that accused number 1 is the one who stopped the agent. He doesn't deny that he had a conversation with the agent and even talked to him about the amount of R200-00, because according to him the speed at which the agent was travelling cost the amount of R200-00 as a fine. The identity of the people appearing on the footage should not have been an issue taking into consideration the evidence of the accused persons (respondents) themselves.

[22] Accused 1 admits that they stopped the agent for exceeding the speed limit and used their discretion not to issue a traffic summon to him as he was rushing to his children. Accused 1 also admits that he made a joke with the agent to the effect that if he thought otherwise, he would put R200-00 under a stone. Accused 2 as well admits that after the agent apologised, he jokingly said that he could give them cool drink or lunch. It is clear from the evidence of the respondents that they both engaged in a conversation with the agent about him giving them an amount of money, cooldrink or lunch. They are all three in agreement that the agent told them that he was rushing to fetch his children in Tshikota. The court

a quo in its judgment remarked that it was left with a suspicion that there was something untoward that was going on there.

[23] It is prudent that the extracts of the evidence of accused 1 be quoted for the sake of context. When his legal representative, Advocate Makhera, led his evidence in chief he said the following, which appears on paginated page 867 of the transcribed record:

"MR MAKHERA: Discussing about what?

ACCUSED 1: As to what work is he doing and some other stuff.

MR MAKHERA: And why were you asking him such?

ACCUSED 1: It was after he had told us about the children and we took discretion that I a person is like that, speeding for the children, we cannot issue him or write him a ticket".

[24] On paginated page 868 of the transcribed record accused number 1 continued to give his evidence in chief and this is what he said:

"ACCUSED 1: Some of the things were that if ever there is something which he wants to, he will go under the stone if there is something he wants to pop out and... that he will go under the stone, if there is something which he wants to do there. And further that he was supposed to be issued out with a ticket of R200-00".

[25] When accused 1 was cross examined by the prosecutor he confirmed that those words were said by him and that is reflected on paginated page 893 as follows:

"PROSECUTOR: I said who uttered those words?

ACCUSED 1: Initially, I even said that I am the one who stated those words".

[26] The confirmation by accused 1 that he is the one who spoke to the agent about the amount of R200-00 cures the contradiction by the agent that he stated in his statement that accused 2 is the one who asked for the amount of R200-00. The words that accused 1 said to the agent were heard from the video clip as appearing on paginated page 890 of the transcribed record and interpreted as follows during cross examination of accused 1 by the prosecutor:

"PROSECUTOR: Play it again.

VIDEO CLIP: "[Indigenous language]."

PROSECUTOR: Yes, if you don't want us to write a traffic summon, give us money to eat. Obvious it will not be Mavunga. It is between you and accused 1, accused 2 rather.

If you don't want to answer my question [indistinct]?

Do you have an answer or not Sir?

ACCUSED 1: I do not have an answer to that".

[27] The words that were said in the indigenous language and interpreted as they appear on the preceding paragraph are consistent with the version by the agent that the discretion not to issue him with a traffic summon was made or exercised by the respondents together after he put money under the stone to which he was directed by accused 1, because indeed pursuant to what was said by accused I the agent went to the stone after being directed to do so and placed an amount of R70-00 underneath the stone.

[28] It is clear from the record of the proceedings that the stone in question is not seen on the audio and video footage, and the agent is also not seen putting the money under the stone. The explanation that was given by the agent about the availability of the money for the sake of being brought as evidence in court was that copies of that money were not made as the money was to be given away without being recovered as the arrest was not immediately effected at the scene.

[29] In the face of all what has been mentioned above, the court *a quo* still found in favour of the respondents or acquitted them besides saying the following on paragraphs 3 and 4 of paginated page 1130 of its judgment:

"The two accused say indeed they did discuss they had some conversation with Superintendent Avhapfani Michael Mavunga. When one considers the contents of this conversation between the two accused and Superintendent Avhapfhani Michael Mavhunga one is left with a suspicion that there was something untoward that was going on there.

One is left with a suspicion that there was foul play going on. I have already indicated that the court makes a factual finding that the audio and video footage played into the record during the course of the trial falls short of corroborating and confirming the evidence of Superintendent Avhapfani Michael Mavhunga the agent".

[30] The other issue which flows from the judgment of the court *a quo* which the appeal court has to deal with is the issue of the contradictions in the evidence of the agent. The three versions by the agent are clearly stipulated in the judgment of the court *a quo*, being that the agent gave contradictory versions as to who stated that he must give them an amount of R200-00. In court he said that it was accused 1 who said that. Later on, he changed his version to say that it was accused 2. He then at the end said that he cannot remember who said so between the two of them because the incident took place long time ago. In the statement that the agent filed with the police he said that accused 2 is the one who asked for the money.

[31] On the contradictions between the evidence in court and the statement that was made by the agent to the police, the court *a quo* rightly referred to the cases of *S v Mafaladiso*[9] and the case of *S v Bruiners*[10], on how such contradictions should be dealt with. However, the court *a quo* just mentioned those cases and the legal principles outlined in the cases it quoted from paginated pages 1128 to 1129 of its judgment but did not apply the principles to the facts in the case at hand.

[32] The court *a quo* went further to rightly quote on the issue of contradictions, the cases of *S v Mkohle*[11] and the case of *S v Webber*[12], but still could not pronounce on whether he accepted that an error was committed by the agent in his evidence or not, as the quoted case of *Mkohle, supra,* requires. The court *a quo* could not clearly say as to whether the truth was told or not despite the contradictions. In my view had the court *a quo* applied the principles laid down in the cases it quoted to the facts of the case at hand, it would have reconciled the evidence of the accused persons told in court and that of the agent and then determine if the truth was told.

[9] 2003 (1) SACR 583 (SCA).
[10] 1998 (2) SACR 432 (E).
[11] 1990 (1) SACR 95.
[12] 1971 (3) SA 714 (A).

[33] On the evidence of the audio and video footage, it is clear that not everything was audible and visible. The fact that there were parts that were visible and audible and some not, could not in my view mean that the whole evidence of that footage should have been rejected. The court should have dealt with the parts that were audible or visible, for instance the part which the prosecutor highlighted regarding lunch money being requested.

[34] If the court *a quo* had considered the evidence in totality, it would have found that indeed there was a foul play that was going on there, not just a suspicion. The court *a quo* would have found that as the definition of corruption requires, that a gratification was asked and it was then offered, hence the agent left without having been issued with a traffic summon. I am satisfied that indeed the appellant raised a question of law which this court has dealt with or considered.

[35] Section 310 makes provision for substitution of a verdict. In this case the court will substitute the verdict of not guilty to that of guilty on the main count on both respondents. The sentence proceedings will be remitted back to the same Regional Magistrate P.V. Mudau, so that he can deal with the sentence proceedings appropriately by hearing mitigating and

aggravating circumstances in the case. Section 310(4) of the CPA requires that the court *a quo* must give sufficient notice to the parties about the reopening of the case as directed by the appeal court.

[36] In the result the following order is made:

(i) the appeal by the appellant succeeds,

(ii) the order of the court *a quo* granted on 02 May 2024, of acquitting both respondents on the main and alternative charges is set aside and replaced with a verdict of guilty on the main count of contravention of section 4(1)(a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 against both respondents.

(iii) the matter is remitted back to the court *a quo* for the sentence proceedings in terms of mitigating and aggravating circumstances to commence before Regional Magistrate P.V. Mudau against both respondents.

(iv) The court *a quo* is required to give sufficient notice to the parties involved about the reopening of the case.

[redacted]

J.T. NGOBENI

JUDGE OF THE HIGH COURT

I AGREE

[redacted]

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT

APPEARANCES

For the appellant:	**Advocate M. Muliwa**
Instructed by:	**Director of Public Prosecutions,**
	Limpopo, Polokwane
For the first respondent:	**Advocate R.J. Makhera**
Instructed by:	**Siphiwe Matenzhe Attorneys**
For the second respondent:	**Advocate A.G. Mphanama**
Instructed by:	**Tshidzumba P.A. Attorneys**