

# **SUPREME COURT OF APPEAL OF SOUTH AFRICA**

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

From: The Registrar, Supreme Court of Appeal  
Date: 17 September 2008  
Status: Immediate

### **L K HOHO v THE STATE**

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.

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The Supreme Court of Appeal ('the SCA') today dismissed an appeal by the appellant against his conviction in the Bisho High Court on 22 charges of criminal defamation.

The defamation charges related to defamatory allegations that had been made against various people associated with the Legislature of the Eastern Cape as well as against national ministers, in leaflets that had been distributed in the Eastern Cape and elsewhere. At his trial the appellant denied that he was the author of the leaflets but on appeal the only issue was whether defamation still constituted a criminal offence in South Africa. It was submitted that the crime of defamation

had been abrogated by disuse and also that it was inconsistent with the Constitution.

The SCA held that the basis of the doctrine that law may be abrogated by disuse is the tacit repeal through disuse by silent consent of the whole community. No such tacit repeal could be found to have taken place.

In regard to the question whether the crime of defamation is consistent with the Constitution the SCA held that the law of defamation is designed to protect the reputation of people and that in doing so it limits the right to freedom of expression. Such limitation can be consistent with the Constitution only if it can be said that an appropriate balance is struck between the protection of freedom of expression on the one hand and the value of human dignity on the other. Having considered the competing interests and the hurdles that have to be overcome in order to secure a conviction on a charge of criminal defamation the SCA concluded that the criminalisation of defamation is not inconsistent with the Constitution.