



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

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Rasimate Samuel Baloyi v The State (739/2021) [2022] ZASCA 35 (01 April 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment dismissing an appeal against the Limpopo Division of the High Court, Polokwane (the high court).

The issue before the SCA concerned failure by the trial court to mention whether the murder was planned or premeditated on conviction, but only during sentencing, which constituted a misdirection.

The appellant and his erstwhile accused (accused 2) were charged and convicted of murder by the Regional Court (the trial court). The trial court found no substantial and compelling circumstances and sentenced both to life imprisonment. The appellant appealed against the conviction and sentence to the full bench of the high court, which dismissed his appeal; hence leave to appeal was granted by the SCA. This court granted leave on a limited ground whether 'the sentence imposed and whether the state established that the matter was premediated.'

The SCA held that the trial court correctly analysed the evidence and cannot be faulted for finding the appellant guilty of murder. However, the SCA held that the trial court did not say whether the murder was planned or premeditated in its judgment on conviction. It was only in sentencing the appellant that the trial court mentioned premeditation for the first time.

In addition, the SCA held that it was clear that there was nowhere in the trial court's judgment prior to the imposition of the sentence where any reference was made to planning or premeditation of the murder by the appellant. Consequently, the full court did not make any pronouncement on the issue as well, suffice to use the trial court's words that the murder was premeditated. As a result, the SCA had to reflect on the issue and determine whether the murder was indeed planned or premeditated.

The SCA held that the appellant had time to think about the attack. Hence, the attack did not occur on the spur of the moment. Furthermore, the SCA held that the motive behind the appellant's action was to continue with the fight he alleged had occurred in the late afternoon. As a result, the SCA found that under those circumstances, the appellant had premeditated the attack on the deceased. However, the SCA found that the trial court misdirected itself in pronouncing that the murder was premeditated only at the sentencing stage. Accordingly, the SCA had to determine whether the appellant was prejudiced by such misdirection.

The SCA held that failure to make a pronouncement at the verdict stage as to which of the provisions of Part 1 of Schedule 2 of Act 51(1) was the accused convicted of would certainly constitute a misdirection in every case it occurs. However, the SCA held that such failure may not in each case prejudicially affect the accused to an extent where the accused ought to be sentenced to the minimum sentence of life imprisonment; he/she would escape such a sentence by virtue of such a misdirection.

In addition, the SCA had to also determine whether the trial court erred in respect of the sentence it imposed on the basis of its finding that there were no substantial and compelling circumstances. The full court found that the trial court did not err, and the SCA agreed with that finding.

Furthermore, the SCA held that the issue of sentence was predominantly in the discretion of the trial court. An appeal court would not interfere with that discretion unless there was a clear misdirection amongst other factors. The SCA found that there was no misdirection. As a consequence, the aggravating circumstances far outweighed the appellant's personal circumstances, which are not out of the ordinary. As a result, the SCA found that the sentence of life imprisonment was appropriate.

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