



**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:** 4 April 2022

**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*

*Sibongile Lupumlo Mpuqe v The State (53/2021) [2022] ZASCA 37 (4 April 2022)*

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Today the Supreme Court of Appeal (SCA) upheld an appeal from the Western Cape Division of the High Court, Cape Town (high court), in respect of the sentence imposed on the appellant for a charge of attempted murder, and substituted the sentence with one from 15 years' imprisonment to 10 years.

The appellant was charged with robbery, murder, attempted murder, possession of unlicensed firearms and illegal possession of ammunition. These charges were in connection with a robbery of money that was transported by security officers. The appellant murdered one of the officers while the second officer was saved by his protective clothing and was sentenced by the trial court to life imprisonment for the murder and 15 years' imprisonment for attempted murder. The appellant was granted leave to appeal his sentence.

This appeal revolved around the question whether section 51(2) of the Criminal Law Amendment Act 105 of 1997 (CLAA) was correctly referred to. The appellant had been sentenced to life imprisonment for the murder in terms of section 51(1) whereas the indictment only referred to section 51(2), which attracts a sentence of 15 years for first offenders. This raised the question whether the appellant's trial had been fair. The SCA was, however, satisfied that the appellant's right to a fair trial had not been violated as there was no failure by the court

a quo to appraise the appellant of the content of the CLAA. The court a quo, from the matter's inception, had been dealing with murder in terms of section 51(2).

With regards to the convictions on possession of illegal firearms and ammunition was treated as one for the purpose of sentencing. A prescribed minimum sentence of 15 years applied, unless it could be proven that exceptional circumstances exist which would persuade the Court to impose a lesser sentence. In light hereof, the SCA found that South Africa's jurisprudence clearly indicated that the starting point for a sentencing court is the minimum sentence. The next question is to consider whether substantial and compelling reasons exist which could possibly alter the minimum sentence. This is answered by considering whether the sentence is disproportionate to the crime.

The SCA found that the sentence imposed was in line with the prescripts of section 51(2) of the CLAA and saw no reason to interfere with the sentence imposed regarding the charges of firearms and ammunition. However, this Court did find that the sentence imposed in terms of the charge of attempted murder was disproportionate and that the trial court did not exercise its sentencing discretion reasonably.

In the result, the SCA upheld the appeal in respect of the sentence imposed on the appellant, and substituted the sentence with one from 15 years' imprisonment to 10 years in respect of the charge of attempted murder.

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