



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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Lucky Thomas Khumalo v The State (723/20) [2022] ZASCA 39 (04 April 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment upholding, in part, an appeal against the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA concerned the high court's refusal of the applicant's petition application.

On 22 May 2012, Mr Khumalo (the applicant) appeared at the Regional Court, Nigel (the trial court), where he faced the following charges: (i) robbery with aggravating circumstances; (ii) attempted murder; (iii) contravention of s 3 of the Firearms Control Act 60 of 2000 (possession of an unlicensed firearm) and (iv) contravention of s 90 of the Firearms Control Act 60 of 2000 (possession of unlicensed ammunition). The applicant was found guilty as charged and sentenced as follows: (i) count 1, 15 years' imprisonment; (ii) count 2, 10 years' imprisonment; (iii) count 3, 5 years' imprisonment and (iv) count 4, 1-year imprisonment. The sentences were not ordered to run concurrently, such that the applicant's effective sentence was 31 years' imprisonment.

Dissatisfied with the outcome of the trial, the applicant sought the trial court's leave to appeal against the convictions and the sentences imposed on him. That application was dismissed. A subsequent petition to the high court was similarly unsuccessful. Hence, the applicant appealed against the high court's refusal of his petition.

The applicant's petition to the high court was directed at the convictions and sentences. Although his petition to the SCA was for leave to appeal against the high court's order refusing to grant leave to appeal, the SCA held that it will also address prospects of success in relation to both the convictions and sentences. In this regard, the SCA dealt with the following two questions.

Firstly, the SCA dealt with the question of whether there were prospects of success in relation to the convictions? The SCA held that considering all the circumstances of this case, it was of the view that the evidence tendered by the State weighed so heavily as to exclude any reasonable doubt about the applicant's guilt. Moreover, the mosaic of the evidence as a whole was, beyond reasonable doubt, inconsistent with the applicant's innocence.

In addition, the SCA held that the inescapable inference was that the applicant was the aggressor on the night of the incident; that he shot at the complainant, chased him into a yard, fired more shots at the complainant and then robbed him of his money. Consequently, the SCA found that the trial court rightly rejected the applicant's version as false beyond a reasonable doubt. Hence, the high court correctly dismissed the petition against the convictions. As a result, the SCA found that there are no prospects of success in respect of the applicant's convictions.

Secondly, the question before the SCA was whether there were any prospects of success regarding the applicant's sentences? The SCA held that it was indeed so that all four offences for which the applicant was convicted may be considered to have been committed in a single sequence of criminal conduct. Consequently, this was an aspect that bore consideration in this matter. Hence the SCA held

that there were reasonable prospects that another court could have found that the trial court did not properly consider the cumulative effect of the sentences and that it might, consequently, order some sentences to run concurrently, which might, in turn, reduce the term of the effective sentence. As a result, the SCA found that on this ground alone, the application for leave to appeal stands to succeed.

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