



**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:** 08 June 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***

*Thembinkosi Mekuto v The State* (1120/2020) [2022] ZASCA 86 (07 June 2022)

---

Today the Supreme Court of Appeal (SCA) handed down a judgment upholding in part an appeal against the decision of the full court of the Western Cape Division of the High Court, Cape Town (the full court). The issue for determination was whether the refusal to grant Mr Thembinkosi Mekuto (the applicant) special leave to appeal had to be reconsidered and varied within the contemplation of s 17(2)(f) of the Superior Courts Act 10 of 2013.

The applicant and four other persons were arraigned in the Western Cape Division of the High Court, Cape Town (the trial court). The applicant was accused no 2 in those proceedings. On the morning of 18 December 2007, two security officers deployed to transport money from Pick n Pay Supermarket to Absa Bank in Hermanus came under fire from a group of armed robbers. The robbers ordered them to drop the money bags on the floor. The security guards duly dropped the money bags. Despite complying with the orders of the robbers, the robbers shot at the security guards at close range. One of the security officers, was fatally injured and died on the scene. The other security guard, was apparently saved by the metal plate of his bulletproof vest. The robbers took the money bags and drove off in a getaway motor vehicle. All five suspects were arrested and charged with robbery with aggravating circumstances (count one), murder (count two), attempted murder (count three), possession of unlicensed firearms (count four) and illegal possession of ammunition (count five).

The applicant and his co-accused were all convicted as charged. The trial court accordingly sentenced all the accused persons to 15 years' imprisonment in respect of robbery with aggravating circumstances, life imprisonment in respect of the murder charge, and 15 years' imprisonment on the counts relating to the unlawful possession of firearms and ammunition, which were taken together for purposes of sentence. A sentence of 15 years' imprisonment

was imposed in respect of the attempted murder charge. Aggrieved by that result, the applicant and his co-accused applied for leave to appeal against all of their convictions and sentences to the full court. The trial court granted accused no 1 (first appellant) leave to appeal against convictions and sentences, while the applicant and his other co-accused were granted leave to appeal against sentences only. The first appellant's appeal was upheld and the convictions and sentences were set aside. The appeals of the applicant and the other co-accused persons were unsuccessful. The applicant then applied to the SCA for special leave to appeal but his application was dismissed on 12 November 2020.

The applicant subsequently brought an application in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 for the reconsideration and, if necessary, variation of the decision of the two judges who dismissed his application for special leave to appeal. The issue for determination was whether or not the two judges of the SCA ought to have found that there were reasonable prospects of success and exceptional circumstances warranting the granting of special leave to appeal against the sentences imposed on the applicant.

Regarding count one, robbery with aggravating circumstances, the SCA held that it had not detected any misdirection committed by the trial court in respect of the minimum sentence imposed on the applicant. The SCA found that there were no substantial and compelling circumstances that warranted deviating from the applicable minimum sentence of 15 years' imprisonment imposed on the applicant. The SCA held that the applicant's application for special leave to appeal against the sentence of life imprisonment was justifiably dismissed by the two judges of the SCA; it consequently held that there was no compelling reason why it should reconsider or vary the refusal of leave to appeal against the sentence imposed in respect of count two. As regards count four and five, the SCA held that the full court correctly refused to interfere with the sentence imposed by the trial court in counts four and five; it therefore held that the two judges of the SCA correctly refused the applicant's application for leave to appeal against the sentence imposed in respect of that charge. Consequently, there was no valid reason why their decision to refuse leave in respect of counts four and five should be reconsidered or varied. The SCA held that count three was on a different footing. The SCA held that the circumstances under which the applicant committed that offence were identical to those of his former co-accused, Mr Mpuqe. and that it had not been shown that the applicant's level of participation in relation to the commission of attempted robbery was more culpable. Furthermore, the personal circumstances of the applicant were not much different from those of Mr Mpuqe, whose sentence had since been reduced to 10 years' imprisonment on appeal. The SCA found that there was no reason why the applicant's sentence ought to have been more severe than that of his former co-accused. It therefore held that there were special circumstances that impelled it to reconsider and vary the decision to refuse leave to

appeal in respect of count three. The SCA held that an appropriate sentence for the applicant in relation to the attempted murder was 10 years' imprisonment.

~~~~ends~~~~