



## 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:** 30 August 2024

**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***

*Mfana Ignitius Kubai v The State* (923/2023) [2024] ZASCA 123 (30 August 2024)

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Today the Supreme Court of Appeal (SCA) upheld an appeal and set aside and substituted the order of the Limpopo Division of the High Court, Thohoyandou (the high court).

The appellant, Mr Kubai, together with two other accused, were arraigned in the Regional Court held at Makhado (the regional court) on various charges, including the illegal hunting of rhino. He was convicted on the charge of illegal hunting in contravention of s 31(1)(a) of the Limpopo Environmental Management Act 7 of 2003 (LEMA), and sentenced to 11 years of imprisonment by the regional court. Mr Kubai was granted leave to appeal to the high court in respect of the sentence imposed. The high court gave notice to Mr Kubai to show cause why it should not, on appeal, increase the sentence imposed by the regional court.

Having heard the appeal, the high court imposed upon Mr Kubai a sentence of 15 years' imprisonment, holding that it was bound to interfere with the sentence imposed by the regional court in that the regional court had sentenced Mr Kubai in terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 (the CPA), rather than under the penalty provision of s 117(1)(a) of LEMA which was an error that required correction, and the consideration afresh of an appropriate sentence. Similarly, the high court reasoned that the sentence of 11 years' imprisonment imposed by the regional was 'shockingly inappropriate' considering the circumstances.

As to the basis upon which the high court considered it necessary to set aside the order of the regional court, the SCA reasoned that it could not fault the regional court's finding as the regional court referenced s 117(1)(a) of LEMA, and determined the appropriate sentence in contemplation of the maximum term of imprisonment stipulated in that provision. The SCA pointed out that, while the sentence imposed on Mr Kubai was framed in terms of s 276(1)(b) of the CPA, that provision contained the proviso that it was subject to any other law and LEMA was such a law.

As to whether it should interfere with the high court's order, the SCA held that the sentence imposed by the high court cannot be allowed to stand as, first, the high court misdirected itself when it considered Mr Kubai to have fashioned a career as a rhino poacher, and consequently that he could not *de facto* be considered a first offender.

Second, the high court reasoned that, whether or not Mr Kubai was a first offender, the seriousness of his crime warranted the imposition of the maximum punishment permitted under LEMA. This implied

that the conviction on a single count of poaching a rhino warranted the maximum period of imprisonment permitted by LEMA. This is not what LEMA provides. On this point, the SCA held that the high court paid no regard to degrees of seriousness, and turned the maximum sentence into a minimum sentence.

Lastly, the SCA held that the high court failed to weigh in the balance the time of 2 years and 3 months that Mr Kubai had been in custody awaiting the final outcome of the proceedings. In effect, the high court sentenced Mr Kubai to an effective sentence of 17 years and 3 months of imprisonment – a period of time in excess of the maximum allowed by LEMA.

In the result, the SCA found that the appropriate sentence that the high court should have imposed was a term of imprisonment of 9 years, together with the forfeiture orders that were given by the regional court.

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