



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: 12 December 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.

Sethosa v The State (679/2023) [2024] ZASCA 172 (12 December 2024)

Today, the Supreme Court of Appeal (SCA) set aside a decision of the Gauteng Division of the High Court, Johannesburg (the high court), wherein it dismissed a petition lodged in terms of s 309C of Criminal Procedure Act 51 of 1977 (the CPA). The decision was substituted with an order directing the appellant's legal representative to take steps to ensure that a proper reconstruction of the record of the proceedings was conducted. The SCA further ordered the reconstructed record to be placed before two high court judges for a reconsideration of the petition by a court different from that previously considered it.

The appellant, Mr Phenyio Sethosa, was convicted of rape and sentenced to 10 years' imprisonment by the Regional Court, Johannesburg (the regional court). His application for leave to appeal against both conviction and sentence was dismissed by the regional court. He then lodged a petition with the high court, which was also rejected. The appellant subsequently obtained special leave from the SCA to appeal against the refusal of the petition.

Before the SCA, the State, as the respondent opposing the appeal, raised a preliminary issue regarding portions not transcribed or included in the appeal record. The SCA subsequently issued directives for the parties to file supplementary affidavits to address the issue after the appellant's counsel failed to address it satisfactorily. From the supplementary affidavits filed by both parties, it became apparent that an incomplete record of appeal was presented to the high court to consider the petition.

The SCA held that the appellant is responsible for furnishing a court of appeal with a complete record of the proceedings before a lower court. It found that, without a complete transcribed record of the appeal having served before the high court that considered the petition or, in the absence of it, a proper reconstruction thereof, the SCA would not be able to make an informed decision as to whether the decision of the high court should stand or not. The SCA further found that an appropriate order would be to set aside the high court's decision and remit the matter back to the high court for the complete record of the proceedings in the regional court, including the reconstruction thereof, to serve before it, and then reconsider the petition.