



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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Status: Immediate

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Nabolisa v The Regional Court Magistrate and Another (568/2022) [2023] ZASCA 07 (19 January 2024)

Today the SCA handed down judgment dismissing the appeal against the decision of the Gauteng Division of the High Court, Johannesburg (the high court).

On 8 April 2021 the high court dismissed an application brought by the appellant seeking an order to review and set aside the decision of the first respondent convicting and sentencing him on the basis that his fair trial rights were infringed. The common cause facts were that the members of the SAPS, acting on a tip-off, searched and found large quantities of powdery substances stored in two suitcases kept in a house used and controlled by the appellant. In the forensic tests that were conducted by Sgt Rodney Machimane, the drugs analyst attached to the Forensic State Laboratory, it was found that the powdery substances were cocaine weighing 2.455kg, paracetamol (acetaminophen) weighing 5.681 kg and methenamine (hexamine) weighing 2.748 kg. Having been charged and appeared for trial before the first respondent at the Regional Division of Alexandra, the appellant was found guilty of dealing in cocaine in contravention of s 5(a) of the Drugs and Drug Trafficking Act 140 of 1992 and unlawful possession of paracetamol and methenamine in contravention of the Medicines and Related Substances Act 101 of 1965. Pursuant thereto, he was sentenced to undergo imprisonment for 30 years. When his appeal remedy against the convictions and sentence was unsuccessful, he resorted to the review application in terms of s 38 read with s 35 of the Constitution, alleging that had the respondents not infringed his fair trial rights he would not be convicted and sentenced. The upshot of the appellant's appeal was that the decision of the high court would have been different if the first respondent had taken into account that the prosecutor failed to use the working papers of the forensic analysis when leading the evidence of Sgt Machimane; selective samples of the exhibit substances were used during the forensic analysis; the HP4 and HP9 machines used and the GC-MS technique applied in testing the exhibit samples did not comply with international standards; and that the prosecutor was rude towards one of the witnesses called to testify on behalf of the appellant's co-accused. In assessing the appeal, the SCA took into account the facts found proved by the regional court that the appellant was the

possessor of and dealer in the exhibit substances that were recovered by Warrant Officer De Jager and that the forensic analysis conducted by Sgt Machimane revealed that the exhibit substances fitted the description of cocaine, paracetamol and methamphetamine that are prohibited substances under the Drugs Act and Medicines and Related Substances Act. The submission made on behalf of the appellant that the forensic analysis of the exhibit samples and the machines used did not meet international standards is not borne out of the facts. The SCA did not find any irregularities in the proceedings before the high court, including the forensic evidence adduced by Sgt Machimane. Neither was any of the appellant's trial rights infringed in the management of the trial by the first respondent. The language used by the prosecutor during the cross-examination of Dr Dinsmare did not compromise the integrity of the trial proceedings. Instead, the SCA found that the appellant chose not to ask for further particulars to the charge or to call upon the state to discover the working papers for the preparation of his defence. The appellant chose not to testify and call witnesses to challenge the state evidence which called for his answer. In the absence of a misdirection on sentence, the appeal court is not entitled to interfere with the imposed sentence of 30 years' imprisonment.

In the result, the SCA dismissed the appeal.