



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

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.

Cele v The State (681/2024) [2025] ZASCA 199 (19 December 2025)

Today the Supreme Court of Appeal (the SCA) upheld the appeal of Mr Sabelo Dan Cele (the appellant) against an effective sentence of 41 years and 6 months' imprisonment imposed by the Gauteng Division of the High Court (the trial court), and confirmed by the Full Court of that Division. The appellant was convicted of multiple counts, namely: murder; attempted robbery with aggravating circumstances; unlawful possession of a firearm; and illegal possession of ammunition.

The murder count was read with s 51 of the Criminal Law Amendment Act 105 of 1997 (the CLAA), and upon conviction, carried a prescribed minimum sentence of life imprisonment in terms of s 51(1) of the CLAA. In terms of s 51(3), the trial court found substantial and compelling circumstances justifying a deviation from the prescribed sentence of life imprisonment. It imposed the following sentences: (a) Count 1 (murder): 30 years' imprisonment; (b) Count 2 (attempted robbery with aggravating circumstances): 17 years' imprisonment; (c) Count 3 (unlawful possession of a firearm): 5 years' imprisonment; (d) Count 4 (unlawful possession of ammunition): 6 months' imprisonment.

The trial court ordered that the 5-year sentence on count 2 and the entire sentence on count 4 run concurrently with the sentence on count 1. The sentence on count 3 was ordered to run consecutively to the other sentences. This resulted in the effective term of 41 years and 6 months imprisonment. On subsequent appeal to it, the full court reduced the sentence for attempted robbery from 17 to 15 years' imprisonment, but the overall effective term of 41 years and 6 months' imprisonment remained.

The SCA clarified two aspects in the judgment, namely: (a) the correct approach to statements by counsel from the bar in mitigation of sentence; and (b) the proper basis on which an appellate court is entitled to interfere with a sentence imposed by a trial court.

As to (a), the SCA had regard to s 274 of the Criminal Procedure Act 51 of 1977. It observed that on its face, s 274(1) requires that information relayed to the court for sentencing be presented as evidence given under oath. However, over the years, a practice has developed in terms of which facts in mitigation of sentence are presented to the court by an accused's legal representative. But this is subject to the State and the court admitting those statements. If the court is not prepared to accept such statements, fairness dictates that it must give adequate notice to the accused so that they can decide whether or not to testify in mitigation of sentence. In the present case, the court had given such notice in advance and explained to the appellant the implications of s 274(1). It therefore did not commit an irregularity.

As to (b), the SCA pointed out that a court of appeal can interfere with a sentence imposed by a trial court only on two bases. First, where a material misdirection by the trial court vitiates the exercise of its discretion. Second, where the disparity between the sentence imposed by the trial court and that which the court of appeal would have imposed, is marked.

Turning to the facts of the case, the SCA identified the latter as the basis of interference. It pointed out that the trial court erred by failing to consider the cumulative effect of the sentences it imposed for the various offences. The SCA held that the Full Court also erred in failing to reduce the effective sentence to 41 years 6 months' imprisonment.

The SCA upheld the appeal against the effective sentence. It imposed sentence afresh as follows: Count 1 (murder): 18 years' imprisonment; count 2 (attempted robbery with aggravating circumstances): 10 years' imprisonment; count 3 (unlawful possession of a firearm): 5 years' imprisonment; count 4 (unlawful possession of ammunition): 6 months' imprisonment. The sentences in counts 3 and 4 shall run concurrently with the sentence in count 1. The total effective sentence is therefore 28 years' imprisonment. The substituted sentence was antedated to 6 May 2013, being the date on which the appellant was sentenced.

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