**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:** 18 November 2026

**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***

*Nyembe v The State* (570/2024) [2026] ZASCA 156 (18 November 2026)

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Today, the Supreme Court of Appeal (SCA) handed down a judgment in which it considered an appeal against the effective sentence imposed on Mr Sifiso Nyembe (the appellant), convicted of robbery with aggravating circumstances, unlawful possession of a firearm, unlawful possession of ammunition and kidnapping. The appeal concerned the cumulative effect of the sentences, their relationship with a previous murder sentence, and the legality of a partially suspended sentence imposed without specified conditions.

The appellant, together with Messrs Justice Maringa and Thatho Sakwana (two co-accused) pleaded guilty to the offences arising from an incident in Kensington, Johannesburg, on 2 February 2012, during which they robbed the complainant at gunpoint of her BMW motor vehicle, cellphone and gold necklace, and drove away with her still inside the vehicle. The regional court imposed an effective sentence of 23 years' imprisonment and declined to order any portion of the sentences to run concurrently with a separate 14-year sentence imposed for murder in unrelated proceedings.

On appeal, the high court reduced the effective sentence to 19 years' imprisonment, but suspended four years of the kidnapping sentence without specifying conditions and increased the sentence for unlawful possession of ammunition from 12 months to eight years. The appellant challenged the cumulative effect of the sentences and the legality of these orders.

The SCA found that the offences constituted a separate and distinct criminal enterprise from the murder. The appellant had committed them while on bail in respect of the murder charge. Accordingly, the lower courts had not misdirected themselves by declining to order concurrency between the sentences imposed in the present matter and the 14-year murder sentence

The appellant contended that the cumulative effect of the sentences, when considered together with the previous 14-year murder sentence, resulted in an excessively severe term of imprisonment. He argued that the kidnapping occurred during the robbery and that the entire sentence for kidnapping should therefore have run concurrently with the sentence for robbery. He further submitted that the suspension of part of the kidnapping sentence without specified conditions was unlawful.

The SCA considered the principles governing concurrent and cumulative sentences under s 280 of the Criminal Procedure Act 51 of 1977. It emphasised that, although courts must consider the cumulative effect of multiple sentences to avoid disproportionate punishment, concurrency is not automatic. The

relationship between the offences, including their connection in time, locality, protagonists and common purpose, remains relevant.

The SCA found that the offences in the present matter constituted a separate and distinct criminal enterprise from the murder for which the appellant had previously been sentenced. The appellant had committed the offences while on bail in respect of the murder charge. The SCA accordingly found no misdirection in the lower courts' decisions not to order any portion of the sentences in the present matter to run concurrently with the 14-year murder sentence.

The SCA nevertheless found that the high court had misdirected itself by suspending four years of the kidnapping sentence without specifying the conditions governing the suspension. It reaffirmed that conditions attached to a suspended sentence must be clear, precise and legally permissible, so that an accused person understands the conduct required and the circumstances in which the suspended sentence may be put into operation. According to the Court the omission constituted a material misdirection warranting appellate interference.

The Court further found that the high court had acted beyond its powers by increasing the sentence for unlawful possession of ammunition from 12 months to eight years' imprisonment in the absence of an appeal by the State against that sentence. The original 12-month sentence imposed by the regional court was therefore required to be reinstated.

The SCA accordingly intervened to correct the sentencing misdirections, while upholding the lower courts' approach to the separate and unrelated murder sentence. The SCA judgment reaffirms that sentencing courts must carefully consider the cumulative effect of multiple sentences, but that offences arising from distinct criminal enterprises do not automatically warrant concurrent sentences. It further emphasises that conditions attached to suspended sentences must be clearly specified and that an appeal court may not increase a sentence in the absence of a competent appeal by the State.

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