



## 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:** 15 April 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***

*Ncitha v The State* (987/2024) [2026] ZASCA 53 (15 April 2026)

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Today, the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Eastern Cape Division of the High Court, Mthatha (the high court). The matter was remitted to the high court to deal with both conviction and sentence before a newly constituted bench.

The case concerned the appellant, Zolisa Ncitha, who was convicted in the Regional Court for the Regional Division of the Eastern Cape, Bizana (the regional court), after pleading guilty to the rape of a nine-year-old girl, and sentenced to life imprisonment. He appealed to the high court, which dismissed the appeal. The SCA thereafter granted special leave to appeal, specifically directing the parties to address both the merits and whether the high court had complied with s 309(1)(a) of the Criminal Procedure Act 51 of 1977 (CPA) in dealing with the appeal.

The appeal before the SCA concerned, in particular, the proper interpretation and application of s 309(1)(a) of the CPA. The SCA traced the legislative history of that section, noting that the automatic right of appeal was removed by the Child Justice Act 75 of 2008 with effect from 1 April 2010, and then restored retrospectively from that date by the Judicial Matters Amendment Act 42 of 2013. As a result, a person sentenced to life imprisonment by a regional court under s 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA) has, since 1 April 2010, enjoyed an automatic right of appeal to the high court without requiring leave. The SCA held that, on a plain reading of s 309(1)(a), that automatic appeal lies against both the conviction and the resultant sentence or order.

The SCA found that the high court had failed to comply with s 309(1)(a) of the CPA because it dealt only with the conviction and not with the sentence. This amounted to a material misdirection. The Court emphasised that once an appeal lies automatically in terms of s 309(1)(a), the high court is required to consider both conviction and sentence simultaneously. By failing to do so, the high court did not fully discharge its appellate function, with the result that a grave injustice was committed, particularly in a matter where the appellant had been sentenced to life imprisonment.

The SCA further noted, with concern, that both parties had failed properly to address the issue identified when special leave was granted, despite its direct bearing on the appellant's constitutional right to a fair trial and the complainant's interest in finality.

The SCA held that it was not competent for it to determine issues that the high court had not dealt with at all, nor to consider the matter on a piecemeal basis. As a result, the SCA upheld the appeal, set aside the order of the high court, and remitted the matter to the high court to deal with both conviction and sentence before a newly constituted bench.

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