



**SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF THE JUDGMENT DELIVERED**

FROM The Registrar, Supreme Court of Appeal

DATE 11 March 2021

STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Edward Mntambo v The State (Case No: 478/2020) [2021] ZASCA 17 (11 March 2021)

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant against the judgment of the Regional Court sitting at Verulam, KwaZulu Natal. Leave to appeal was refused by the KwaZulu Natal Division of the High Court. This court granted leave to appeal.

In terms of the proviso to s 93ter (1) of the Criminal Procedure Act, an accused, prior to pleading to a charge of murder, must elect whether or not he wishes the trial to proceed with or without assessors or whether he waives such right. The appellant was not afforded such opportunity by the Regional Magistrate.

There was thus was non-compliance with the proviso to s 93ter (1) of the Criminal Procedure Act. This is a fatal misdirection which vitiates the proceedings.

The State properly conceded the point and accepted that the conviction and sentence should be set aside and the appellant immediately released from prison.

The appeal therefore succeeded. The appellant was released from custody on 22 February 2021. The judgment setting out the reasons for such order were delivered on 11 March 2021.