



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**PAKANE V THE STATE**

From: The Registrar, Supreme Court of Appeal

Date: Friday, 28 September 2007

Status: Immediate

On 28 September 2007 the Supreme Court of Appeal gave judgment in *Pakane and others v The State* dismissing an appeal from the Mthatha High Court brought by three members of the police force who were involved in a shooting incident at Coffee Bay in which Mr Leon Fourie (the deceased) was killed. The second appellant was convicted of murder and defeating the ends of justice. He was sentenced to 15 years imprisonment for the murder and eight years imprisonment for defeating the ends of justice. His two co-appellants were convicted of being accessories after the fact to murder and were each sentenced to eight years imprisonment.

It was common cause that the second appellant shot and killed the deceased when he fired shots at him with an R4 rifle during a foot patrol near the Lagoon Hotel in the early hours of 13 December 1999. He and his group were investigating a report of shooting in the area which had no lighting. Unbeknown to them, the deceased was also patrolling the neighbourhood.

The SCA accepted trial court's adverse findings against the appellants who gave contradictory versions in respect of material aspects of the case. The SCA accepted the second appellant's version that he shot at a shadowy figure but rejected his explanation that he fired at the figure because it ignored his oral warning that they were police and warning shots and aimed a big rifle in their direction as false in view of evidence that the deceased's 12 bore protector was still on 'safety' and had no bullets in the chamber when his body was found. The SCA found that he unlawfully shot and killed the deceased.

The SCA further confirmed the second appellant's conviction for defeating the ends of justice on a finding that the trial correctly accepted evidence that in a bid to cover up the offence once the appellants realised the deceased's identity after the fatal wound had been inflicted, one of them shot the deceased in the face, at close proximity, to ensure that he was dead to cover up the offence and that the second appellant swapped his rifle with another one, tore out pages with entries linking him to the rifle used in the shooting which was not sent for ballistics testing and failed to report the shooting incident to his immediate superior as he was required by law.

The SCA further found that the trial court had correctly convicted the first and second appellants for their failure to report the offence with the intention to assist the second appellant evade prosecution.

The SCA concluded that in the absence of misdirection on the part of the trial the convictions and sentences imposed on the appellants were proper.