



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

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

From: The Registrar, Supreme Court of Appeal

Date: Monday 1 December 2008

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*

*State v Mavinini (224/2008) [2008] ZASCA 166 (1 December 2008)*

In a judgment delivered today, the Supreme Court of Appeal has dismissed the appeal against conviction of Mr Nhlanhla Wiseman Mavinini, who was convicted of robbery in the Newcastle regional court.

The SCA has however upheld Mr Mavinini's appeal against sentence. The regional magistrate imposed the maximum sentence possible – twenty years. The SCA has reduced this to fifteen years.

On conviction, the SCA held that despite a number of curious features, the evidence established the appellant's guilt beyond reasonable doubt. Pivotal to this conclusion was the fact that the appellant chose not to testify in his own defence at his trial. That was his constitutional right – but he had to bear the consequences, including the fact that there was no answer to the state's evidence. That evidence was that he had been seen driving the green Audi A4 taken in the robbery shortly after the crime was committed. The evidence had some measure of inherent plausibility – and in the absence of an honest rebuttal clinched the case against the appellant.

The SCA, in a judgment by Cameron JA, in which Kgomo AJA and Mhlantla AJA concurred, held that despite some doubt, there was 'moral certainty' about Mr Mavinini's guilt. Though the notion of 'moral certainty' has been criticised as importing potential confusion in jury trials, it is helpful in providing a contrast with 'mathematical' or 'logical' or 'complete' certainty. Those are not required in a criminal trial.

It comes down to this: even if there is some measure of doubt, the court must be prepared not only to take moral responsibility on the evidence and inferences for convicting the accused, but to vouch that the integrity of the system that has produced the conviction – that is, the rules of evidence interpreted within the precepts of the Bill of Rights – remains intact. In other words, the court's subjective moral satisfaction that the accused is guilty is not enough: it must be subjective satisfaction attained through proper application of the rules of the system.

That existed here, and the appeal against conviction was therefore dismissed.