

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 29 November 2010
STATUS Immediate

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

Mogorosi v State
(410/10) [2010] ZASCA 147(29 November 2010))

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Edward Mogorosi against a refusal by the Mafikeng High Court to grant him condonation in respect of his failure to timeously prosecute his appeal in that.

During August 2001 the appellant was convicted in the regional court on a charge of rape and sentenced to imprisonment for a term of 15 years. On 13 March 2009 almost seven years later he approached the Mafikeng High Court by way of an appeal to set aside both the conviction and sentence on the basis that the record of his trial and the audio tapes on which the proceedings were recorded could not be located. In terms of the Magistrates' Court Rules the appellant was obliged to have lodged his notice of appeal within 14 days of having been sentenced. As the lodging of his appeal was late by some seven years the appellant filed an application for condonation with the High Court.

Given that the appellant was seeking an indulgence he had to show good cause for the grant of condonation. Good cause has two requirements. The first being that he had to furnish a satisfactory and acceptable explanation for the delay. And the second, that he had to show that he had reasonable prospects of success on the merits of the appeal.

In the view of the SCA the court below had considered all of the facts that served before it. It had concluded that the delay of seven years in prosecuting the appeal was inordinately long and inexcusable and thus could not be condoned. The SCA could find no fault with the approach adopted by the court below or the conclusion reached by it. It held that it had a ??? power of interference with the decision of the court below in relation to condonation. And concluded that no case had been made out for it to substitute its discretion for that of the high court. It accordingly dismissed the appeal.

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