



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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RAPHAEL MACHONGO V THE STATE

The SCA today upheld an appeal against sentence on the grounds that the trial as well as the full court misdirected themselves. This court came to the conclusion that it was consequently at large to sentence afresh.

The trial court sentenced the appellant to life imprisonment for murder and 20 years' imprisonment for robbery with aggravating circumstances without forewarning him of the applicability of the Minimum Sentence Act. The appellant appealed to the full court against the sentence.

The full court found that it was irregular to sentence the appellant to life imprisonment and 20 years respectively in circumstances where the appellant had not been forewarned. Even the indictment did not contain any semblance of the Minimum Sentence Act. The full court, however, applied an incorrect test to sentence afresh hence it also sentenced the appellant to life imprisonment and 20 years' imprisonment respectively.

This court concluded that considering a sentence afresh must mean setting the sentence of the court a quo aside and conducting an inquiry on sentence as if it has not been considered

before. In other words, the appeal court must disabuse itself of what the court a quo said in respect of sentence. It must interrogate and adjudicate afresh the triad in respect of sentence as stated in the old case of *S v Zinn* 1969 (2) SA 537 (A) which directed that when considering sentence, the personal circumstances of an accused person, the seriousness of the offence and the interest of society must be considered and be balanced.

The sentence was reduced to 25 years' imprisonment on the murder and 15 years' imprisonment on the robbery with aggravating circumstances. It also ordered the 15 years' imprisonment on robbery to run concurrently with the 25 years' imprisonment. The sentence was antedated to 18 November 2004 when the appellant was sentenced for the first time.