



## THE 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** 31 March 2015  
**STATUS** Immediate

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

#### ***Ndwambi v The State (611/2013) [2015] ZASCA***

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#### **MEDIA STATEMENT**

Today, the Supreme Court of Appeal (SCA) dismissed the appeal by Muvhuso Calvin Ndwambi (the appellant) against a conviction of fraud and a sentence of six years' imprisonment imposed by the Regional Court, Kroonstad and confirmed by the Free State High Court, Bloemfontein.

Arising from an incident that occurred on 29 October 2003 at the Shell Ultra City, Kroonstad where a fake rhinoceros (rhino) horn was sold to a policeman in a police trap for R350 000, the appellant and a co-accused were convicted of the crime of fraud committed in the course of the police trap. The evidence established that the appellant's co-accused represented to the policeman that the item she was offering for sale was a rhino horn and that it originated from Mozambique. The asking price for what had been expressly represented to be a rhino horn was R350 000. The appellant was found to have been complicit in the transaction. The representation was false.

The appellant contended in the SCA that the proven facts as found by the trial court did not establish all the elements of the crime of fraud. The evidence did not, so it was contended, prove either the required intent to deceive, which is one of the two principal aspects of the element of intent to defraud, or the element of prejudice.

The SCA held that the evidence of the appellant and that of his co-accused having been correctly rejected as palpably false, left the trial court without the benefit of credible evidence from either of them and, with only the State evidence to determine their respective guilt or innocence of the charges they faced. The SCA held that the prima facie inference, unless gainsaid by credible and reliable evidence, was that the false representation had been made knowingly, or without belief in its truth, or without knowledge whether it was true or false but knowingly exposing the policeman or the State to a

risk that it may be false and deceitfully leaving him ignorant of the exposure. It lay exclusively within the power of the appellant and his co-accused to show what the true facts were but they failed to give an acceptable explanation. The prima facie inference became conclusive in the absence of rebuttal. The SCA accordingly held that an intention to deceive was proved. It was calculated to prejudice. Objectively, some risk of harm could have been caused. It need not be financial or proprietary or necessarily to the person it was addressed. In assessing prejudice the SCA considered it significant to note that even though the transaction in question involved fake rhino horn it must indubitably be so that transactions of this kind contribute to the illegal trade in rhino horn, which we as a country must all be concerned about. The SCA concluded that the appellant was rightly convicted of fraud.

In assessing the reprehensibility of the appellant's conduct the SCA took account of the fact that the appellant is a policeman who was supposed to be on official duty at the time of the commission of the crime of fraud. The SCA concluded that the sentence of six years' imprisonment is appropriate.

The SCA accordingly dismissed the appeal against conviction and against the sentence of six years' imprisonment.

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