



# SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 01 June 2015

**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.*

### **Modiga v The State (20738/14) [2015] ZASCA 94 (01 June 2015)**

[1] The SCA today upheld the appellant's appeal in respect of two counts of being in possession of stolen property without being able to give a reasonable and/or acceptable explanation for such possession but confirmed his conviction and sentences of two counts of robbery with aggravating circumstances.

[2] The appellant was charged with five other men on multiple counts. This case emanated from a cash-in-transit robbery where money and other property belonging to Fidelity Guards were stolen. Two stolen vehicles were used in the robbery. The state led the evidence of a number of witnesses including some police officers. Central to the state's case against the appellant was the evidence of Sergeant Robin Henry Deere (Deere) and one Mr Saul Nxuma (Nxuma). The evidence of Deere was rejected as being untruthful and unreliable. The appellant was convicted on the evidence of Nxuma, who was a single witness.

[3] Although Nxuma was a single witness, the SCA found that the trial court was correct in finding his evidence to have been truthful, reliable and credible. This is so as his evidence was corroborated by independent evidence in the form of the appellant's arrest soon after the robbery inside Nxuma's house where the police discovered and impounded a Mazda Drifter which was used in the robbery earlier that day as well as a bag containing money identified as belonging to Fidelity Guards and an AK47.

[4] The SCA found that the combined effect of Nxuma's evidence and the circumstantial evidence regarding the appellant's arrest were sufficient proof of his complicity in the robbery.

[5] Regarding the contravention of s 37(1) of the General Law Amendment Act, the SCA found that there was no evidence that the appellant was found in possession of the two vehicles involved in the robbery. In other words the SCA found that the state had failed to prove *detentio*.

[6] In the result, the SCA upheld the appeal in respect of counts 3 and 4, but dismissed it in respect of the two counts of robbery. The convictions and sentences imposed by the court below were confirmed.