



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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

Dalindyebo v The State (090/2015) [2015] ZASCA 144

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed the appeal of Buyelekhaya Dalindyebo, Paramount Chief of the AbaThembu (the appellant), except insofar as it related to a conviction of culpable homicide and the related sentence.

The appellant was convicted by the court below of multiple counts of arson, kidnapping, defeating the ends of justice, assault with intent to do grievous bodily harm, and culpable homicide. The charges all related to crimes that were committed between 1995 and 1996, during the appellant's reign as the Paramount Chief of the AbaThembu, and the crimes were all directed against his 'subjects'. The crimes also all occurred on the farm Tyalara, which was registered in the appellant's name and over which he ruled in his capacity as Paramount Chief.

The convictions included crimes arising from the burning of the homesteads of three families as a means of evicting them from the farm, the kidnapping of a mother and her children as a means of coercing the head of their household to appear before the appellant, the assault of three young men to the extent that medical intervention was necessary to avert their deaths, and improper pressure to prevent the laying of criminal charges against the appellant, and to withdraw charges against him.

On appeal to the SCA, the appellant argued that the trial had been unfair due to there being an undue delay in the prosecution, him being inadequately legally represented, and the presiding judge and the prosecutor conducting the trial in an improper fashion. The appellant further argued that the court a quo had erred on both the evidence, and also in convicting him of arson because, the argument went, he could not be convicted of arson where the buildings that he burned down belonged to him

(because the land was his, and the buildings had acceded to his land). Finally, the appellant argued that the effective sentence of fifteen years was too severe.

The SCA rejected as baseless the unfair trial arguments, and found that there was no merit to the allegations of impropriety on the part of the trial judge or the prosecutor, that the multiple legal representatives employed by the accused were adequately experienced, and that the primary cause in the delays in the institution of the prosecution and the trial was the appellant himself.

The SCA also rejected the appellant's argument that the charge of arson was incompetent, and noted that although the land was registered in his name, it was clear from the title deed and the context that it was held by the appellant as hereditary monarch for the benefit of his tribe and 'subjects'. In those circumstances, it could hardly be said that the property was his to set fire to at will. In any event, however, the SCA held that arson can be committed where a person sets fire to his own immovable property with the intention to injure another person.

On the evidence, the SCA confirmed the court a quo's characterisation of the manner in which the appellant ruled as Paramount Chief, which was as a 'merciless despot'. The SCA held that the appellant's behaviour '. . . was all the more deplorable because the victims of his reign of terror were the vulnerable rural poor, who were dependent upon him.'

The SCA rejected the appellant's version that he had burned down the homesteads of his 'subjects' at the behest of 'the community', which had decided to evict the families concerned, and that his beating of the three young men with a sjambok was in fact an intervention consisting of only light punishment, with the aim of placating an enraged mob and preventing further harm to the victims. The SCA further confirmed the convictions relating to defeating the ends of justice.

However, the SCA upheld the appeal with regards to the conviction of culpable homicide, as the evidence linking the appellant to the killing of the fourth young man, being an alleged instruction issued by the appellant, had not been proved beyond a reasonable doubt.

Accordingly, the SCA dismissed the appeal except insofar as it related to the conviction for culpable homicide, and so reduced the effective sentence of the appellant from fifteen years' to twelve years' imprisonment. It concluded as follows: 'The lesson that cannot be emphasised enough is that persons in positions of authority such as the appellant are obliged to act within the limits imposed by the law and that no one is above the law. The Constitution guarantees equal treatment under the law. The appellant behaved shamefully and abused his position as King. The period of imprisonment he is to serve is no more than just deserts for what, given his position of authority, are after all particularly heinous crimes.'

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