



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

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

From: The Registrar, Supreme Court of Appeal
Date: 24 May 2017
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.

LESHAY KLASSEN

and

THE STATE

Arising out of an incident that occurred on 17 June 2006, the appellant was convicted in the Benoni Regional Court on a charge of murder. The charge arose out of an incident which had occurred when the appellant and three co-accused assaulted one Joseph Mbane and beat him to death.

At the stage of sentencing, the trial court concluded that there were no substantial and compelling circumstances which justified the imposition of a sentence less than the prescribed minimum of 15 years' imprisonment. That

sentence was then imposed upon the appellant. Without further inquiry relevant to the issue, the trial court then issued an order under s 276B of the Criminal Procedure Act 51 of 1977 that the appellant should not be placed on parole before he had served two thirds of his sentence.

The appellant appealed against both his conviction and sentence to the Gauteng Division of the High Court, Pretoria. On 5 June 2009 his appeal was dismissed. More than six years later the appellant applied to the Supreme Court of Appeal for special leave to appeal. This was granted to him. There was then a problem in timeously obtaining the record and, as a result, more than nine years had passed since sentence was imposed on the appellant in the trial court before the matter came before the Supreme Court of Appeal.

The appeal against the sentence of 15 years' imprisonment was dismissed. In doing so the Supreme Court of Appeal rejected an argument that the appellant had been heavily under the influence of alcohol as there was no evidence in that regard. Appellant himself had not testified at the trial and, although there was evidence that one of his co-accused had liquor on his breath, the court held it would be impermissible speculation to find that the appellant's actions had in any meaningful way being influenced by intoxication.

In regard to the non-parole period, the Supreme Court of Appeal referred to numerous cases in which both it and the Constitutional Court has stressed that it is necessary for a court to hear the parties and conducting an inquiry before an order of non-parole is imposed under s 276B, a procedure which was not followed in the present case. It therefore set aside the non-parole period. Moreover, in the light of the period of time that had elapsed, the SCA felt that

there was no reason for the issue to be remitted to the trial court to hold the necessary inquiry. There was in any event nothing on the record which indicated that it was an appropriate case for a non-parole period to be imposed.

In the result the order of the trial court imposing a non-parole period under s 276B of the Criminal Procedure Act was set aside. The appeal was otherwise dismissed and the appellant's sentence confirmed.