



## 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** 22 September 2016  
**STATUS** Immediate

#### ***Els v The State (1241/2016) [2017] ZASCA 117***

*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.*

The SCA today upheld an appeal and set aside and substituted a decision of the Gauteng Division of the High Court, Pretoria, from an effective sentence of eight years imprisonment to four years imprisonment, and with a suspended sentence remaining unaltered.

The appellant, Mr Jan Karel Els, a game consultant manager, was charged in the regional court, Musina, Limpopo with 7 counts relating to the contravention of the Limpopo Environmental Management Act 7 of 2003. The State withdrew counts 1 to 4 against the appellant who pleaded guilty to counts 5, 6 and 7. The State accepted the plea, whereafter he was convicted on the said counts. Count 5 related to the purchasing, possession and conveying of 30 rhino horns without a valid permit; count 6 related to the receiving of four rhino horns without a valid permit; and count 7 related to the conveyance of eight rhino horns (being his property) without a valid permit.

The trial court sentenced the appellant on counts 5 and 6, which were taken together as one for sentencing purposes, to ten years' imprisonment, of which two years was conditionally suspended for five years; and on count 7 to four years' imprisonment conditionally suspended for five years. In addition thereto, he was sentenced to a compensatory fine of R100 000 per month payable to the National Wildlife Crime Reaction Unit over a period of ten months for purposes of investigation into rhino related matters.

The appellant launched an appeal against his sentence, which the trial court refused. The appellant then petitioned the Gauteng Division, Pretoria for leave to appeal against the sentence, which was partially successful. The appeal in respect of the sentences in respect of counts 5 to 7 was heard by the court a quo. The court a quo set aside the compensatory fine of R100 000, but left the sentence of eight years' imprisonment on counts 5, 6 and the suspended sentence on count 7.

On appeal to the SCA, the SCA held that both the trial court and the court a quo incorrectly made an assumption, without any rational basis, that the purchasing of the rhino horns by the appellant emanated from illegal hunting of rhinos. These assumptions amounted to a misdirection entitling this Court to interfere. The SCA went further, qualifying its decision to impose a custodial sentence by stating that the rhino species was under serious threat of being slaughtered or commercially exploited, and to impose a non-custodial sentence would send out a wrong message.

In the event, the SCA found that a sentence of four years' imprisonment was appropriate in the circumstances, on counts 5 and 6. The suspended sentence on count 7 remained unaltered.