



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: 03 December 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Nongogo v The State (Case no 852/20) [2021] ZASCA 166 (03 December 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against the order of the Eastern Cape Division of the High Court, Mthatha (the high court), which convicted and sentenced the appellant of murder and conspiracy to commit murder.

In the high court, the appellant was charged together with accused 1 (the appellant was accused 2) for the murder of her husband. Both pleaded not guilty. After 12 state witnesses had been led, accused 1 changed his plea to one of guilty. The presiding judge then granted a separation of trials, at the instance of the State, in terms of s 157 (2) of the Criminal Procedure Act 51 of 1977 (the Act), and the trial of the appellant was ordered to commence *de novo*. When the trial of the appellant commenced *de novo* before another judge, accused 1 was a witness for the State. The judge in the new trial entered a special entry into the record, in terms of s 317 of the Act, on the basis that accused 1 had previously been charged together with the appellant for the same offences. The trial then proceeded and the appellant was convicted of both murder and conspiracy to murder and sentenced to life imprisonment.

There were only two issues on which leave to appeal was granted to the SCA, namely whether the high court duplicated convictions when it convicted the appellant on both murder as well as conspiracy to commit murder and whether an irregularity had been committed by the judge in the first trial in high court, justifying the special entry.

On the issue of duplicated convictions, the State conceded that the appellant should have been convicted of either murder or conspiracy to commit murder, but not both. The SCA held that this concession was well made and, as a result, the appeal on duplication of convictions succeeded.

On the issue of the irregularity, the SCA held that the main test in deciding whether to grant an application for separation is whether there will be prejudice to the accused. The general rule is that once an accused changes their plea to one of guilty it is necessary to separate the trials, entertain the guilty plea, and order that the trial against the other accused start *de novo*. In this matter, the SCA held that it was self-evident that the failure to separate would have caused prejudice to the appellant. Further, there was nothing irregular in accused 1 testifying against the appellant after the trials had been separated. Therefore, the first judge in the high court did not commit any irregularity by ordering a separation of trials and that the trial against the appellant commence *de novo*. The SCA accordingly dismissed the appeal on this issue and found that the special entry should not have been made.

The high court had sentenced the appellant to life imprisonment for murder, after finding no substantial and compelling circumstances. The SCA held that this finding was unassailable and therefore the sentence of the appellant was unchanged.