



## 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:** 26 September 2022

**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 judgments of the Supreme Court of Appeal.*

*Solomons v The State* (Case no 1292/21) [2022] ZASCA 124 (26 September 2022)

The appellant successfully petitioned this Court to appeal against the substituted sentence imposed by the Northern Cape Division of the High Court, Kimberley, following the conviction and sentence for the murder of her long term partner and father of her two children by the Regional Court sitting in Carnarvon. The deceased was 34 years old at the time of his death and the appellant 47 years old.

The conviction carried a prescribed minimum sentence of 15 years as the crime falls within Part 2 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. However, the regional court sentenced her to 8 years' imprisonment after it found there were substantial and compelling circumstances based on her personal circumstances. On appeal, the high court confirmed the conviction but substituted the sentence to 8 years' imprisonment, 3 years of which were conditionally suspended for 5 years, rendering an effective 5-year imprisonment.

The appellant obtained special leave to appeal against the sentence by the high court to this Court, and the appeal was disposed of without hearing oral submissions in terms of section 19(a) of the Superior Court Act 10 of 2013.

Despite finding that the appellant had failed to adduce medical evidence of hospital treatments to support the allegations of assaults by the deceased, and the criticism levelled at the appellant for not laying charges against the deceased, the high court accepted there had been domestic violence based on a domestic violence interdict obtained by the appellant the year before the incident which it could not ignore. It ameliorated the severity of the sentence in the light of reciprocal inter partner violence.

The appellant's first ground for appeal to this Court was that the high court misdirected itself by underemphasising the domestic violence and abuse she suffered at the hands of the deceased. She relied on persistent threats by the deceased to leave her for another woman, whenever she refused to comply with his demands as a facet of emotional abuse. She also relied on a report prepared by the probation officer depicting a history of intergenerational violence in her family of origin. Her second ground for appeal concerned the appropriateness of a non- custodial sentence considering her role as a primary caregiver. She sought an imposition of a non-custodial sentence.

On appeal, the Court observed that the State placed much emphasis placed on the events of the day of the incident. The appellant's attorneys did not counter the view that her conduct was consistent with that of a "woman scorned." The appellant did not place any evidence of the impact of the history of intergenerational violence in her family of origin on her conduct. Furthermore, she did not lead any evidence on factors which caused her to remain in a relationship with the deceased in conditions where she claims he humiliated her. She did not lead evidence in mitigation of her sentence. Despite this, the high court had ameliorated the severity of the sentence in the light of reciprocal inter-

partner violence. The appeal Court found there had been no misdirection by the high court which would warrant an interference with the sentence.

In so far as the imposition of a non-custodial sentence based on her role as a primary care giver, the appeal Court held that the trial court weighed all the factors required when it imposed a custodial sentence. Furthermore, the tissue was overtaken by events. The appellant had been on bail from the time of the imposition of the sentence in 2018. Her first child has attained the age of majority and the younger child was 16 years old. It dismissed the appeal.