



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

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Status: Immediate

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Lebogang Peter Mashilo v The State (1129/2019) [2022] ZASCA 81 (2 June 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the applicant's application for reconsideration for special leave to appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether this Court should grant the applicant's application for special leave to appeal.

On 9 October 2014, the applicant, Lebogang Peter Mashilo, and his co-accused, Mzwakhe Moagi (Moagi), were charged before a regional court with robbery with aggravating circumstances read with the provisions of s 51(2) of the Criminal Law Amendment, Act 105 of 1997 (the Minimum Sentence Act). They were consequently also charged with the kidnapping and the unlawful possession of a firearm. On 14 October 2014, Moagi was convicted of all three offences as charged. The applicant was convicted of robbery with aggravating circumstances and kidnapping. Both accused admitted a previous conviction for robbery with aggravating circumstances. On the robbery charge, no substantial and compelling circumstances having been found to be present, both accused were sentenced to the minimum sentence of 20 years. Effectively, Moagi was sentenced to 28 years' imprisonment and the applicant to 25 years' imprisonment.

Both accused sought leave to appeal. Their application was refused by the regional magistrate. Each separately, petitioned the high court for leave to appeal. In the case of Moagi, it was granted. In the case of the applicant, on 24 May 2014, Msimeki and Baqwa JJ dismissed his petition. Moagi's appeal was heard by a Full Bench of the Gauteng Division of the High Court, (the full bench), which reduced his sentence on robbery with aggravating circumstances to 14 years on the basis that the charge sheet and the trial court failed to forewarn Moagi about the reliance on the provisions of s 51(2) of the Minimum Sentences Act.

In the meanwhile, following the high court's refusal of his petition for leave to appeal, the applicant sought special leave to appeal from this Court. His petition was dismissed. Dissatisfied with this decision, the applicant lodged an application for reconsideration to the President of this Court, in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act). In his application to the President of this Court, the applicant drew attention to Moagi's success on appeal resulting in the reduction of the latter's sentence. The applicant stated that he was subjected to an unfair appeal process because his co-accused, who was in the same legal position as he was, was granted leave to appeal and was successful in the said appeal, while the applicant was not. The President referred the application to this Court for oral argument, in terms of s 17(2)(d) of the Act.

The SCA held that the finding of the full bench that the accused were not forewarned about the applicability of the minimum sentencing regime was not supported by the record. The charge sheet made specific reference to the minimum sentence legislation. Furthermore, the SCA found that neither

the accused, nor their legal representatives were under any misapprehension that a minimum sentence applied.

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