



## 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:** 23 January 2023

**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*

*Maila v The State (429/2022) [2023] ZASCA 3 (23 January 2023)*

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Limpopo Division of the High Court, Polokwane, sitting as a full bench (the high court), which had dismissed an appeal against the conviction and sentence of the appellant, Mr Simon Maila. The appellant was convicted of the rape of his 9-year-old niece and sentenced to life imprisonment by the Regional Court in the Regional Division of Limpopo, Lenyenye (the regional court).

The facts of the case were briefly as follows. On 6 December 2010, the complainant, a 9-year-old girl, was raped in her home, which she shared, inter alia, with her uncle (the appellant), her mother and her grandmother. The rape occurred during the day when both her mother and grandmother were not at home. In their absence, the appellant raped the complainant twice.

The issues for determination by the SCA were whether the appellant was properly convicted on the evidence of a single witness; and whether the trial court correctly admitted the warning statement – which was illegally obtained – and in which he incriminated himself.

The SCA found that, taking into consideration the concession by the State, undoubtedly, the admission of the warning statement by both the regional and high courts was a material misdirection. This meant that the evidence of the State should have been considered without the warning statement.

On the conviction, the SCA found that the regional court was correct to accept the evidence of the complainant as satisfactory in all material respects. And that the discrepancies in the complainant's evidence on the two aspects relied upon were irrelevant and immaterial to whether she was indeed raped, when and by whom. Thus, the appellant was properly convicted on the evidence of a single witness.

With regard to the appellant's version, the SCA found that there were improbabilities in the appellant's version in general and, in particular, his alibi. As a result, the evidence, when viewed in its totality and excluding the warning statement of the appellant, proved the appellant's guilt beyond reasonable doubt. Consequently, the appeal against the conviction had to fail.

On the sentence, the SCA found that the regional magistrate did not commit any misdirection in imposing the prescribed sentence of life imprisonment. The regional court had regard to the basic triad of sentencing; it noted the following as aggravating circumstances: the appellant was the complainant's maternal uncle and in a position of trust – who is 'supposed to protect and love' the complainant and not abuse her; and it took into account the seriousness of the offence and the prevalence of rape in the region. The SCA agreed that there were no compelling and substantial circumstances to justify a lesser sentence.

Notably, the SCA remarked on the deplorable rape statistics in South Africa. And, accordingly, communicated that courts should, through consistent sentencing of offenders who commit gender-based violence against women and children, not retreat when duty calls to impose appropriate sentences, including prescribed minimum sentences, in appropriate circumstances, such as in this case.

In the result, the SCA dismissed the appeal against both the conviction and sentence.

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