



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable
Case no: 146/2023

In the matter between:

EZHIAH SKHUMBUZO MVUBU

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Mvubu v The State* (146/2023) [2026] ZASCA 62 (29 April 2026)

Coram: NICHOLLS, UNTERHALTER and COPPIN JJA and MABESELE and KGANYAGO AJJA

Heard: 17 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date for hand down is deemed to be 29 April 2026 at 11h00.

Summary: Criminal Law and Procedure – sentence – special leave – s 309 of the Criminal Procedure Act 51 of 1977 (the CPA) – leave to appeal refused by

the magistrate – petition in terms of s 309C of the CPA refused by the High Court – leave to appeal against dismissal of the petition granted by this Court – test is whether the appellant has shown reasonable prospects of success on appeal – appeal upheld.

ORDER

On appeal from: Kwazulu-Natal Division of the High Court, Pietermaritzburg (Nkosi and Poyo-Dlwati JJ, sitting as Court of Appeal):

- 1 The appeal is upheld.
- 2 The order of the Kwazulu-Natal Division of the High Court, Pietermaritzburg, refusing the petition for leave to appeal, is set aside.
- 3 The appellant is granted leave to appeal against sentence to a full bench of the Kwazulu-Natal Division of the High Court, Pietermaritzburg.

JUDGMENT

Mabesele AJA (Nicholls, Unterhalter and Coppin JJA and Kganyago AJA, concurring):

[1] This is an appeal against the refusal by the Kwazulu-Natal Division of the High Court, Pietermaritzburg (the high court), per Nkosi and Poyo-Dlwati JJ of a petition for leave to appeal against the sentence imposed on the appellant by the Newcastle Regional Court (the regional court). It should be noted at the outset that there was some confusion as to whether this was an appeal against sentence or an appeal against the refusal of a petition. The confusion arose in the manner set out below.

[2] The appellant, as accused 2, was arraigned in the regional court together with his brother, Mr Phendulani Mzakile Mvubu, who was accused 1, on multiple counts of robbery with aggravating circumstances; unlawful possession of two

R5 automatic assault rifles and a semi-automatic LM rifle; unlawful possession of 66 R5 rounds of ammunition and, the theft of a vehicle. He was sentenced to 15 years' imprisonment on three counts of robbery with aggravating circumstances; 15 years' imprisonment on two counts of the unlawful possession of R5 automatic assault rifles and, a count of the unlawful possession of a semi-automatic LM rifle; 1 years' imprisonment on a count of unlawful possession of 66 R5 rounds of ammunition; and 5 years' imprisonment on a count of theft of a vehicle. The last two sentences were ordered to run concurrently with the balance of the sentences. Accordingly, the appellant is serving an effective term of 30 years' imprisonment. Additionally, the magistrate invoked the provision of s 276B of the Criminal Procedure Act 51 of 1977 (the CPA) and ordered the appellant to serve at least two-thirds of the 30 years' imprisonment sentence imposed upon him, before he could be placed on parole. He was also declared unfit to possess a firearm in terms of s 103 of the Firearms Control Act 60 of 2000.

[3] Leave to appeal against the appellant's convictions and effective sentence of 30 years' imprisonment was refused by the regional court. On petition to the high court, leave to appeal was granted against conviction on counts 1, 2, 3 and 8. Leave to appeal against sentence was refused. The high court confirmed the convictions on counts 1-3 (the three counts of robbery with aggravating circumstances) and set aside the conviction on count 8 (the theft of a vehicle). Although the appeal against sentence was not before it, the high court exercised its inherent jurisdiction to remove the non-parole period that had been set by the regional court. Dissatisfied with the outcome, the appellant approached this Court on petition to appeal against the sentence.

[4] In his application for leave to appeal to this Court, dated 10 February 2022, the appellant sought the following order:

‘That the Applicant be granted special leave to appeal to the above Honourable Court against the refusal of his petition by the Kwazulu-Natal High Court (Pietermaritzburg) in respect of sentence only.’

[5] However, instead of granting the order sought, this Court, made the following order:

- ‘1. The application for condonation is granted.
2. Special leave to appeal against sentence is granted to the Supreme Court of Appeal.
3. Special condonations:

“The special leave should be heard together with that of PM Mvubu, who was granted special leave to appeal by this Court under Case No: 1215/2019 on 17 February 2020, if the latter has not been disposed of yet.”

[6] This order contains a patent error when one has regard to what the appellant sought. With the consent of both parties, the order was duly amended at the hearing of this matter. The amended order now reads:

- ‘1. The application for condonation is granted.
2. Special leave is granted to the Supreme Court of Appeal against the refusal of the petition for leave to appeal against sentence.’

We were informed that the appellant’s brother has successfully appealed certain of his convictions and has been released from prison, so the special conditions fell away.

[7] In terms of s 309 (1)(a) of the CPA, appeals from the magistrates’ court must be heard by the high court. This Court has, on several occasions, reiterated that it enjoys no competence to hear an appeal on the merits of a conviction or

sentence directly from the magistrates' court.¹ From as far back as *S v Khoasasa*,² *S v Matshona*,³ *Tonkin v S*,⁴ to the latest *Mathuthu and Others v S*,⁵ it has been clear that the issue to be determined by this Court is not whether the appeal against conviction and sentence should succeed, but whether the high court should have granted leave, which in turn depends upon whether the appellant has reasonable prospects of success on appeal.

[8] It is necessary to give a brief summary of the events that gave rise to the convictions and the resultant sentence of 30 years' imprisonment imposed on the appellant, in order to assess the 'appropriateness of the sentence' and to determine whether the appellant would have reasonable prospects of success on appeal.

[9] On 14 February 2008, at Pick n Pay, the appellant and his erstwhile co-accused, armed with firearms, assaulted Andriaan Stephanus Dannhauser, Elize Sophie Cornelius, Angel Maphumolo, Roelene Ackerman, Chantelle Mells, Roxanne Jade Hope, and robbed them of cash to the value of R48 474.12. On the same date, and at the same place, they assaulted Louise Smith and robbed him of cash and a Nokia cell phone. They further assaulted Andriaan Dannhauser and robbed him of a Nokia cell phone. None of the victims sustained serious injuries.

[10] On 15 February 2008, at Volksrust, the appellant was arrested for the unlawful possession of two R5 automatic assault rifles, a semi-automatic LM rifle and 66 R5 rounds of ammunition.

¹ *Masango and Another v S* (203/2022) [2024] ZASCA 98 (14 June 2024) para 4; *Nong and Another v The State* (787/2021) [2024] ZASCA 25 (20 March 2024) para 4.

² *S v Khoasasa* [2002] ZASCA 113; 2003 (1) SACR 123 SCA [2002] 4 All SA 635 (SCA).

³ *S v Matshona* [2008] ZASCA 58; [2008] 4 All SA 68 (SCA); 2013 (2) SACR 126 (SCA).

⁴ *Tonkin v S* [2013] ZASCA 179; 2014 (1) SACR 583 (SCA).

⁵ *Mathuthu and Others v The State* [2024] ZASCA 50 (17 April 2024).

[11] Counsel for the appellant argued that the appellant has prospects of success on appeal. The basis of this submission is that the firearms found in his possession were used in the commission of the robberies, and the sentences imposed for the robberies ought therefore to run concurrently with those imposed for the unlawful possession of firearms and ammunition. Counsel for the state, on the other hand, submitted that the effective sentence of 30 years' imprisonment imposed upon the appellant does not induce a sense of shock if regard is had to the seriousness of the offences committed.

[12] A sentence of 30 years' imprisonment is extremely severe and is ordinarily reserved for those cases falling within the highest range of wrongdoing.⁶ The magistrate did not order that the sentences run concurrently, reasoning that the offences were serious and prevalent in the country. He further found no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentences in respect of the robberies and the unlawful possession of the firearms. These reasons however, are too sparse to justify the effective sentence of 30 years' imprisonment imposed on the appellant.

[13] The magistrate did not explain the basis upon which he characterised the offences committed as falling within the highest range of seriousness. He failed to give due consideration to the appellant's personal circumstances, which include his clean record, his prospects of rehabilitation, his age (32 years), and the absence of serious injuries sustained by the victims. Moreover, the magistrate did not provide full and compelling reasons to demonstrate that the judicial discretion to impose a just sentence was properly exercised.

⁶ *S v Mabunda* [2013] ZASCA 30; 2013 (2) SACR 161 (SCA) para 7; *S v Muller and Another* [2011] ZASCA 151; 2012 (2) SACR 545 (SCA) para 10.

[14] The paucity of reasons provided by the magistrate for the passing of such a long sentence entitles this Court to reverse the decision of the high court to refuse leave to appeal on sentence. Accordingly, for these reasons, the appellant has reasonable prospects of success on appeal and it is appropriate that leave be granted to him to appeal his sentence to the full bench of the Kwazulu-Natal Division of the High Court, Pietermaritzburg.

[15] In the result, the following order is made:

- 1 The appeal is upheld.
- 2 The order of the Kwazulu-Natal Division of the High Court, Pietermaritzburg, refusing the petition for leave to appeal, is set aside.
- 3 The appellant is granted leave to appeal against sentence to a full bench of the Kwazulu-Natal Division of the High Court, Pietermaritzburg.

M M MABESELE
ACTING JUDGE OF APPEAL

Appearances:

For the appellant: M Ponoane

Instructed by: SLK Attorneys Inc, Pietermaritzburg
Blair Attorneys, Bloemfontein

For the respondent: C Kander

Instructed by: The Director of Public Prosecutions, Pietermaritzburg
The Director of Public Prosecutions, Bloemfontein.