



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

**JUDGMENT**

Case No: 487/2016

In the matter between:

**James Sello Mathekola**

**Appellant**

and

**The State**

**Respondent**

**Neutral citation: *Mathekola v State* (487/2016) [2016] ZASCA 106 (14 July 2016)**

**Delivered: 14 July 2016**

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## ORDER

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1 Condonation for the late filing of the application is granted.

2 The decision of this court dated 26 October 2015 dismissing the applicant's application for special leave to appeal is referred to the court for reconsideration and, if necessary, variation.

3 The applicant is directed to file with the Registrar of this court six (6) copies of his application in terms of s 17(2)(f) of Act 10 of 2013, as well as six (6) copies of his initial application to this court for special leave to appeal, within one month of the date of this order and thereafter to comply with the rules of this court relating to the conduct of appeals.

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## JUDGMENT

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### **MPATI AP**

[1] The applicant and two others faced a number of charges in the regional court of the Regional Division of Pretoria. He was convicted on 12 March 2013 of, amongst others, four (4) counts of robbery with aggravating circumstances and four (4) counts of kidnapping. The kidnapping counts relate to the robbery, at gunpoint, of four victims whose movements were allegedly restricted, in that they were prevented from leaving the room in which they were, while the robbery was taking place. In respect of the kidnapping counts the applicant was sentenced to five (5) years' imprisonment on each count. The trial court ordered that the sentences on these counts (counts 2, 4, 6 and 8) run concurrently. Together with the sentences imposed in respect of the robbery counts, the total effective sentence was 20 years'

imprisonment. An application for leave to appeal was refused by the regional court. Leave to appeal was also refused by the North Gauteng High Court, Pretoria.

[2] On 12 August 2015 this court (Theron and Dambuza JJA) granted leave to one of the applicant's erstwhile co-accused, Mr Peter Maphakela, to appeal to the Full Court of the Gauteng Division of the High Court, Pretoria, against the convictions and sentences on counts 2, 4, 6 and 8. However, on 26 October 2015 this court (Maya DP and Mathopo JA) dismissed the applicant's application for special leave to appeal on the grounds that 'there are no special circumstances meriting a further appeal to this court'. The applicant has now applied to the President of the Supreme Court of Appeal for a referral of the decision dismissing his application for special leave to appeal to the court for reconsideration and, if necessary, variation, in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013. He has submitted in his founding affidavit that counts 2, 4, 6 and 8, namely the kidnapping counts, 'though standing alone, constitute a single continuous criminal transaction which was carried out as a single intent, viz robbery'. In essence, the applicant's submission is that there had been a duplication of charges.

[3] It does not appear from a reading of the judgment of the regional court that the State's case against the applicant was different from that presented against his erstwhile co-accused, who was subsequently granted leave by this court. It seems to me that a failure to refer the decision to dismiss the applicant's application for special leave to appeal against his convictions and sentences in respect of counts 2, 4, 6 and 8 to the court for reconsideration might result in grave injustice, particularly if the appeal of his erstwhile co-accused were to succeed. I am satisfied that the applicant has shown that exceptional circumstances exist for the decision of this court dismissing his application for special leave to appeal to be referred to it for reconsideration.

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

1 Condonation for the late filing of the application is granted.

2 The decision of this court dated 26 October 2015 dismissing the applicant's application for special leave to appeal is referred to the court for reconsideration and, if necessary, variation.

3 The applicant is directed to file with the Registrar of this court six (6) copies of his application in terms of s 17(2)(f) of Act 10 of 2013, as well as six (6) copies of his initial application to this court for special leave to appeal, within one month of the date of this order and thereafter to comply with the rules of this court relating to the conduct of appeals.

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L Mpati  
Acting President