



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 28 September 2018

STATUS Immediate

Khoza & another v The State (1267/2017) [2018] ZASCA 133 (28 September 2018)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The appellants and others were charged in the North West Division of the High Court, Mahikeng with, inter alia, murder (count 1) and robbery with aggravating circumstances (count 2). The indictment did not make reference to the Criminal Law Amendment Act 105 of 1997 (Minimum Sentences Act). During the trial both appellants subjectively formed the perception that the trial judge was biased against him. When the trial judge refused to recuse himself, the appellants terminated the mandate of their legal representatives and took no further part in the trial.

The trial court found that the appellants had participated in a planned armed robbery, during which the victim was shot and killed by one of the other accused persons. It therefore convicted the appellants on counts 1 and 2. Only thereafter did the trial court inform the appellants that they were exposed to a sentence of life imprisonment in terms of the Minimum Sentences Act in respect of the conviction on count 1. Having found that there were no substantial and compelling circumstances that justified a departure from the

prescribed minimum sentence, the trial court sentenced the appellants to life imprisonment on count 1 and to twenty years imprisonment on count 2. The appellants appealed to the full court against their sentences. They argued that they had not been afforded a fair trial. The full court, however, dismissed the appeal.

Today the Supreme Court of Appeal (SCA) upheld the appellants' further appeal to it. The SCA held that it had to be accepted that the appellants were informed of the applicability of the Minimum Sentences Act only after they had been convicted. Thus, they were not aware that they were exposed to a sentence of life imprisonment when they resolved to take no further part in the trial. When they were informed thereof, they were not legally represented. The SCA held that there was a reasonable possibility that the appellants may have conducted their cases differently, had they been alerted to the applicable provisions of the Minimum Sentences Act at the outset of the trial. The SCA held that the appellants had been prejudiced and that they had not been afforded a fair trial in respect of the sentencing proceedings. Thus, the SCA ordered that the sentences be set aside and that the matter be remitted to the trial court to impose sentence afresh without the application of the Minimum Sentences Act.