



CONSTITUTIONAL COURT OF SOUTH AFRICA

Qhinga and Others v The State

**Case No: CCT 50/10
[2011] ZACC 18**

Date of Judgment: 25 May 2011

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 25 May 2011 the Constitutional Court handed down a judgment in an application for leave to appeal against the dismissal by the Supreme Court of Appeal of a petition filed by the applicants.

The applicants were convicted by the Eastern Cape High Court, Bhisho (High Court) on counts of attempted murder and robbery with aggravating circumstances. They were convicted on the strength of self-incriminating statements and pointings-out, which they contend were made without being apprised of their right to legal representation, and after being threatened, assaulted and tortured by the police. The High Court conducted trials-within-the-trial and ruled that the statements and pointings-out were admissible as evidence. In its judgment, the Court did not explain its reasons for admitting this evidence but merely indicated that its rulings formed part of the record.

After being denied leave to appeal by the High Court, the applicants petitioned the President of the Supreme Court of Appeal for leave to appeal, arguing that their statements and pointings-out were incorrectly admitted as evidence. The Supreme Court of Appeal dismissed the petition without reasons and without having considered relevant portions of the record (including the rulings in the trials-within-the-trial). The applicants appealed to the Constitutional Court, arguing that the Supreme Court of Appeal could not have considered their petition properly without regard to the record.

Mthiyane AJ, on behalf of a unanimous Court, held that the Supreme Court of Appeal could not have conducted an adequate reappraisal of the matter without having regard to the reasons for the admission of the incriminating evidence. Therefore, the applicants did not have the benefit of

the fair trial right “of appeal to, or review by, a higher court” in terms of section 35(3)(o) of the Constitution.

The application for leave to appeal was upheld, the order of the Supreme Court of Appeal was set aside, and the matter was remitted to the Supreme Court of Appeal for reconsideration.