



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Mandla Trust Mpofu v Minister for Justice and Constitutional Development and Others**

**Case No: CCT 124/11**

**Date of Hearing: 29 November 2012**

**Date of Judgment: 6 June 2013**

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### MEDIA SUMMARY

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*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.*

Today, the Constitutional Court handed down a judgment dismissing an appeal against a decision of the South Gauteng High Court, Johannesburg (High Court) which sentenced the applicant, Mr Mandla Trust Mpofu, to life imprisonment.

Mr Mpofu appealed to the Constitutional Court against his life sentence alleging that he was a child at the time of the commission of the offence. He argued that the High Court failed to take his minority status into account when sentencing him as required by section 28 of the Constitution which guarantees the best interests of the child. The application was opposed by the Director of Public Prosecutions of the South Gauteng High Court (DPP). The DPP disputed Mr Mpofu's claim and argued that the High Court had correctly exercised its sentencing discretion. The Centre for Child Law was admitted as a friend of the Court.

In a majority judgment by Skweyiya J (concurring in by Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Zondo J and Yacoob J), Mr Mpofu's applications for condonation and for leave to appeal were refused. The majority finds that while a constitutional issue is raised by the application, the interests of justice did not favour the grant of leave to appeal. It holds that Mr Mpofu failed to establish that the right under section 28 of the Constitution was engaged at all, because he had not shown that he was under the age of 18 at the time of the commission of the offence. The fact that the application for leave to appeal was made 10 years after the High Court sentenced Mr Mpofu, and that Mr Mpofu had failed to explain the extent of this delay, further weakened the interests of justice in granting both the applications for condonation and leave to appeal. In addition, Mr Mpofu did not adequately

explain why he brought two previous applications to the Constitutional Court for leave to appeal against his sentence in which this issue was not raised.

In a separate judgment Van der Westhuizen J (with Khampepe J and Nkabinde J concurring) reasoned that leave to appeal should be granted and that based on the wording of the High Court's judgment on sentencing, Mr Mpofu was a child at the time of the offence. The minority judgment finds that the High Court misdirected itself in failing to consider Mr Mpofu's rights as a child when it imposed its sentence. In the light of the misdirection, Van der Westhuizen J would have set aside the sentence and substituted it with a sentence of 20 years imprisonment.

The Constitutional Court dismissed the applications for condonation and for leave to appeal.