



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Minister of Justice and Constitutional Development and Another v Nontombi Masingili and Others**

**CCT 44/13**

**Date of hearing: 27 August 2013  
Date of judgment: 28 November 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 delivered a judgment declining to confirm an order of constitutional invalidity made by the Western Cape High Court, Cape Town (High Court).

The respondents were convicted of “robbery with aggravating circumstances” in the Cape Town Regional Magistrate’s Court. The third and fourth respondents had robbed a shop by threatening the owner with a knife. The first respondent (Ms Masingili) acted as a scout and the second respondent (Mr Volo) acted as a driver. They appealed to the High Court.

The High Court held that the prosecution had not proven that Ms Masingili and Mr Volo had foreseen the use of the knife – which constituted the aggravating circumstances. It reasoned that the phrase “or an accomplice” in section 1(1)(b) of the Criminal Procedure Act means that an accomplice to robbery with aggravating circumstances is guilty of robbery with aggravating circumstances even without foresight of those circumstances. This effect unjustifiably limited the right not to be deprived of freedom arbitrarily or without just cause under section 12 of the Constitution and the right to be presumed innocent under section 35. It therefore declared the words “or an accomplice” in section 1(1)(b) of the Criminal Procedure Act unconstitutional and postponed the appeal pending confirmation proceedings in this Court.

In a unanimous judgment, written by Van der Westhuizen J, the Constitutional Court declined to confirm the High Court’s order of constitutional invalidity. The Court held that, because robbery with aggravating circumstances is not a crime separate to robbery, a person can be guilty of robbery with aggravating circumstances without having intended those circumstances and

therefore be subject to a statutory minimum sentence. This does not infringe the right not to be deprived of freedom arbitrarily or without just cause because (a) whether the accused intended the aggravating circumstances may be taken into account in sentencing, (b) the purpose of statutory minimum sentences is rational and not arbitrary and (c) the accused must still have criminal intent for robbery, which is an inherently violent crime. It also does not infringe the right to be presumed innocent, as the prosecution must prove the elements of robbery and the existence of aggravating circumstances.

The Constitutional Court upheld the appeal by the Minister of Justice and Constitutional Development and the National Director of Public Prosecutions and remitted the matter to the High Court for the finalisation of the respondents' appeal.