



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Ramthal v The State (704/2023) 2024 ZASCA 124 (13 September 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court) which dismissed the appellant's petition for leave to appeal.

The appellant, an armed response security officer, was tried in the Verulam Regional Court (the regional court) for the murder of Senzo Dlamini (the deceased). The State alleged that he unlawfully and intentionally killed the deceased. The appellant pleaded not guilty to the charge. In amplification of his plea, he stated that he shot the deceased in private defence of himself and his colleague.

On the day of the incident, the appellant, responded to a call for backup from his colleague. He arrived at the scene and found the colleague wrestling with the deceased who was on top of him. The colleague was screaming for help, stating that the deceased was reaching for his firearm, which was 'one up'. The deceased managed to break the firearm free from the holster and took possession of it. The appellant who was armed with a nine-millimetre Taurus firearm fired the first shot to the ground. According to him, the deceased tried to come towards him, while pointing the firearm at him. The appellant fired a second shot which hit the deceased on the knee. The deceased continued to approach still with the firearm pointed at the appellant's direction. The appellant fired the third shot which struck the deceased on the chest. The two shots were quick in succession (a few seconds apart). The deceased later died from his injuries, and the appellant was taken to the police station and charged.

He was convicted and sentenced to eight years' imprisonment by the regional court. His application for leave to appeal was denied by the regional court. He petitioned the high court, seeking the respective leave to appeal, which was also refused. Special leave to appeal the high court's refusal was subsequently granted by the SCA.

The issue for determination by the SCA was whether the appellant had established reasonable prospects of success on appeal. In the main, his submissions were that the regional court had erred by rejecting his version of private defence. In the alternative, he contended that the regional court misdirected itself by failing to consider culpable homicide as a competent verdict to murder. As to sentence, he submitted, amongst other things, that a sentence of correctional supervision ought to have been considered. In this regard, so he contended, the degree of blameworthiness should have been measured, as is the question of what the appellant ought to have done in the circumstances.

The State submitted that the appellant exceeded the bounds of private defence, even if the deceased was armed and had advanced towards him. The basis for this contention was that the trajectory of the fatal chest wound, which was downward from left under the armpit, suggested that the deceased was

on the ground when the fatal shot was fired. The State further submitted that the sentence imposed was not shocking, startling or disproportionate, entitling the appeal court to interfere.

In the majority judgment, the SCA restated what was said in its previous judgments that, in the appeal of this kind, 'the issue to be determined is not whether or not the appeal against conviction and sentence should succeed, but whether the high court should have granted leave, which in turn depends on whether the appellant could be said to have reasonable prospects of success on appeal'. Without wishing to comment on the merits in detail, given the outcome of the appeal, the majority held that the alleged errors in the analysis of evidence by the regional court, in relation to the alleged ground of justification, private defence, could result in a court of appeal reasonably arriving at a different conclusion than that of the regional court.

The majority further found that it was prudent to grant leave to appeal also in respect of sentence, considering the possibility that an appeal court may find that a competent verdict to murder ought to have been found, or that other grounds as alleged by the appellant, exist to consider a different sentence. As a result, it upheld the appeal, granting the appellant leave to appeal to the high court, against his conviction and sentence in the regional court.

The minority judgment, on the other hand, found that it has would have dismissed the appeal, as there would be no reasonable prospects of success on appeal, in respect of both conviction and sentence. The minority judgment was of the view that the revisitation of this matter on appeal would be a futile exercise if due regard would be had to the facts and the applicable legislation. It held that it would be arguable whether this was an issue that could be resolved by three gunshots from a security officer, in succession. It found there to be no reasonable prospects of success on appeal also on the sentence.

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