



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

Date: 17 April 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mathuthu and Others v The State (393/2021) [2024] ZASCA 50 (17 April 2024)

Today the Supreme Court of Appeal (SCA) made an order in which it dismissed leave to appeal the refusal of the petition in respect of the conviction and granted leave to appeal the refusal of the petition in respect of sentence. The SCA further remitted the matter back to the Gauteng Division of the High Court, Johannesburg (the high court) in respect of the sentence.

The appellants appeared before the Newlands Regional Court, Johannesburg (the regional court) on a number of counts, to wit eleven in total. The counts ranged from robbery with aggravating circumstances read with s 51(2) of the Criminal Law Amendment Act 105 of 1997 to attempted murder, unlawful possession of unlicensed firearms in term of ss 3 and 90 of the Firearm Control Act 60 of 2000 and contravention of s 36 of the General Law Amendment Act 62 of 1935, being in possession of a motor vehicle which was reasonably suspected to have been stolen. They were all convicted on counts one to four and the third appellant was convicted on count five, whilst the fourth appellant was convicted on count six. The sentences were ordered to run concurrently.

The appellants, aggrieved with the convictions and sentences imposed, sought leave to appeal, which the regional court refused. An application to the high court for leave to appeal by way of petition in terms of s 309C of the Criminal Procedure Act 51 of 1977 was also refused. The SCA then granted the appellants special leave to it for the refusal of the petition seeking leave to appeal in respect of both the conviction and sentence.

The brief background facts were as follows. On 9 February 2015, Thatoya Malimo Molefe (Mr Molefe) was on his way home to Midrand, having attended a meeting in Parkmore when he was robbed of his Toyota Camry motor vehicle at gun point by the appellants. Following upon this incident, on 17 February 2015 at the Worldware shopping mall in Fairlands, the appellants entered an MTN store and robbed the store of cell phones at gun point, to the value of R380 000 and cash in the amount of R2000. In an attempt to flee from the MTN store, the appellants fired shots at the security personnel in the shopping mall and proceeded to their getaway vehicles, being the Toyota Camry, a Volkswagen Polo and a Kia Rio RS. This was the same Toyota Camry which was taken from Mr Molefe in Parkmore. A shoot out ensued between the security personnel and the appellants. In an attempt to flee the scene, one of the appellants was apprehended at the scene as he injured himself whilst trying to climb over a high wall. Another appellant fled into a nearby field, and was apprehended by the security personnel in the field after he shot at the security guard and eventually surrendered himself.

Police on patrol, stationed at Fairlands, were informed of a Toyota Quantum fleeing the scene. They spotted the vehicle and gave chase. As the vehicle, which was in their sight at all times, attempted to evade the police on the N1, volumes of traffic hindered their progress. The driver and the passenger exited the vehicle and fired shots at the police. At some point, the driver of the vehicle got back into the vehicle and abandoned the passenger, who was eventually apprehended by the police.

The last appellant to be arrested was apprehended when he pretended to seek assistance from a home in the area close to the scene. A security guard on patrol noticed the altercation between this appellant and the gardener of the home. A shoot out ensued between them and the security guard sought cover outside of his vehicle. The appellant managed to drive away with the security guard's vehicle until he came to a *cul de sac* and was arrested by the security guards.

The issue before the SCA related to whether the high court had correctly dismissed the petitions for leave to appeal the conviction and sentence.

The SCA in coming to a conclusion reasoned that, even though the appellants' challenged the evidence of the eye-witnesses and the reliability of these witnesses as single witnesses, the regional court correctly applied the cautionary rule to the evidence of the single witness and the hypothesis advanced by the magistrate bore credence and did not detract from the trial courts findings of fact on the evidence. The SCA, on this aspect, concluded that the high court's dismissal of the petition for leave to appeal the convictions was thus correct as there was no misdirection by the trial court.

With regards to the sentencing phase, the SCA reasoned that the sentences imposed by the magistrate were not clearly set out and required clarification for a definitive sentence to emerge, holding that it was clear that the judgment of the regional court on sentence was not particularly helpful and was incoherent. The SCA further stated that the high court did not deal with the confusion as set out in the sentence, pointing out that there was a clear misdirection by the sentencing court in imposing a sentence that is confusing, incoherent and clearly not comprehensible and that the high court was obliged to deal with this confusion and failed to do so when it refused the petition. In the circumstances, the SCA held the view that it is constrained to remit the matter to the high court to deal with the issue of sentence.

In the result, the SCA issued an order in which it dismissed leave to appeal the refusal of the petition in respect of the conviction and granted leave to appeal the refusal of the petition in respect of sentence with the result that the matter be remitted to the high court in respect of the sentence.

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