



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: 20 APRIL 2022

Status: Immediate

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David Papiki Komane v The State (51/2019) [2022] ZASCA 55 (20 April 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the application for leave to appeal against the decision of the Limpopo Division of the High Court, Polokwane (the high court).

The issue before the SCA was whether the trial court should have convicted the applicant based on the confession, the DNA evidence, the pointing out, and whether the applicant had a case to answer.

On 26 January 2018, the applicant, Mr David Papiki Komane, together with three of his erstwhile co-accused, was convicted of robbery with aggravating circumstances in the high court. As a result, the applicant was accordingly sentenced to 18 years' imprisonment. His application for leave to appeal against both conviction and sentence was dismissed by the high court.

The applicant's conviction arose as a result of a robbery that took place at a G-Force Security Solutions Depot (G4S) in Marble Hall. The arrest of the applicant occurred on 9 December 2015 at the Marble Hall Police Station, where he was employed as a constable in the South African Police Service (SAPS). Following his arrest, his motor vehicle and home were searched by the arresting officer, but no money was found. He was then booked into the police cells at Polokwane Police Station for the night. On 10 December 2015, he was booked out by police officers involved in the investigation of the robbery. It is common cause that he directed Warrant Officer Ramotebele and the other police officers to a homestead of a healer/priest in Siyabuswa, where he collected a parcel. The parcel turned out to be money, which was handed over to Warrant Officer Lombard. The money, totalling over R600 000, was counted in the applicant's presence. Later in the day, he made a statement to Colonel Serfontein.

It was submitted on behalf of the applicant that the DNA was circumstantial evidence and was inadequate to sustain a conviction. Furthermore, the applicant contended that the high court should not have admitted the applicant's statement made to Colonel Serfontein, as the applicant was not afforded legal representation when he appeared before Colonel Serfontein and that the statement that he made to Colonel Serfontein was dictated to him by Colonel Brinkman, who was involved in the investigation of the matter.

The SCA found that the DNA of the applicant was found in a single place with the DNA of his erstwhile co-accused one and two, who were involved in the planning and execution of the robbery from the outset, which could not be said to have been a coincidence.

The SCA also found that the detailed nature of the statement given by the applicant to Colonel Serfontein showed that the applicant had personal knowledge of the events. In addition, the SCA accepted that Colonel Serfontein knew that the applicant was entitled to legal representation specifically for the purpose of taking the statement. This was clear from the recording of the response given by the applicant, where he said: 'I have a legal representative who will come to court, I do not need him now'.

Consequently, the SCA held that the trial court was correct in its admission of the statement by the applicant to Colonel Serfontein. In respect of the pointing out, the SCA held that the manner in which the pointing out was conducted went against what is prescribed in s 217(1) of the Criminal Procedure Act 51 of 1977 (the CPA). However, the SCA found that there was sufficient circumstantial evidence on which the applicant was convicted.

In conclusion, the SCA held that the DNA evidence and the confession, together with all the other evidence, was sufficient to prove beyond reasonable doubt that the applicant, together with all his erstwhile co-accused, were complicit in the commission of the robbery with aggravating circumstances, as proven by the State. The trial court, therefore, convicted him correctly.

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