



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Mokoena v The State [2019] ZASCA 74

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellant and set aside the order of the Gauteng Local Division of the High Court, Johannesburg. The SCA ordered that, in terms of s 324(c) of the Criminal Procedure Act 51 of 1977 (CPA), proceedings in respect of the same offence for which the appellant was convicted may again be instituted on the same charge, suitably amended if necessary, as if the appellant had not been previously arraigned, tried and convicted.

The appellant was charged for theft in the amount of R1 million and sentenced to 15 years' imprisonment in the Johannesburg Regional Court. At the time of the theft the appellant was in the employ of SBV Cash Services. The matter was postponed in the regional court on a number of occasions. The magistrate then concluded that the completion of the proceedings was being delayed unreasonably and because the appellant sought a further postponement and did not wish to proceed with the matter at that stage, an order as contemplated in subsection (3)(d) of the provisions of s 342A of the Act, should issue that the 'proceedings be continued and disposed of . . . as if the case for the defence has been closed'.

The appellant then appealed to the high court which held that the magistrate had incorrectly applied s 342A(3)(d) of the CPA read with s 342(4)(a) in arriving at the conviction. Accordingly, it ordered that the matter be remitted to the regional court for the trial to continue before the same magistrate.

On appeal to the SCA, the issues were two-fold. First, whether the magistrate was entitled to invoke s 342A(3)(d) of the CPA read with s 342A(4)(a); and second whether the high court was correct to remit the matter to the same magistrate for the re-opening of the defence's case.

With regard to the first issue, the SCA held that the grant of the order in terms of s 342A(3)(d) of the CPA, was clearly a technical irregularity. It stated that the high court erred because in terms of s 342A(4)(a) of the CPA no order should be issued in terms of s 342A(3)(d) unless exceptional circumstances existed and all other attempts to speed up the process had failed.

With regard to the second issue, the SCA found that the high court had failed to take into account that the magistrate had made serious credibility findings against the appellant and had rejected his version on the evidence. The SCA therefore concluded that the provisions of s 324(c) of the CPA in that where a conviction and sentence are set aside by a court of appeal on the grounds that there has

been a technical irregularity or defect in the procedure, then proceedings in respect of the same offence may be instituted as if the accused had not been previously arraigned, tried and convicted.

In the circumstances the appeal was upheld and the order of the high court was replaced to require in terms of s 324(c) of the CPA that the appellant be tried before a magistrate that did not preside over the original trial.