



## **SUPREME COURT OF APPEAL: SOUTH AFRICA**

### **MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM:** The Registrar, Supreme Court of Appeal

**DATE:** 27 September 2019

**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.*

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#### ***Livanje v The State (378/2018) [2019] ZASCA 126 (27 September 2019).***

The SCA today upheld an appeal, set aside and substituted the decision of the full bench, Free State Division of the High Court, Bloemfontein.

The appellant stood trial in the Regional Court, Hoopstad, on 2 counts. The appellant tendered a plea of guilty to a charge of contravening the provisions of s 49(1) of the Immigration Act 13 of 2002, for having entered or being illegally inside the RSA. He was convicted and sentenced in respect of that charge to two months imprisonment. The trial court convicted the appellant on count 1 (housebreaking with intent to commit an offence of robbery) and sentenced him to ten years imprisonment in terms of s 51(2) of the Criminal Law Amendment Act 105 of 1997, read with Part IV of Schedule 2.

The appellant launched an appeal against conviction and sentence in respect of Count 1 to the Free State Division of the High Court, Bloemfontein. The conviction and sentences were confirmed by the full court.

He subsequently petitioned this Court for special leave to appeal against both conviction and sentence. With special leave of this Court, the appeal against conviction and sentence was before this Court.

The SCA held that the trial court erred in convicting the appellant on count 1 of housebreaking with intent to rob, when the additional intention to commit the substantive crime of robbery was not proved. Therefore, the conviction on the second part of the offence should be set aside and replaced with the

conviction of housebreaking with intent to commit an offence unknown to the State, which is the very offence the appellant was charged with.

The SCA further held that the trial court misdirected itself by convicting the appellant of the offence of housebreaking with intent to rob, read with the provisions of s 51(2) of the Criminal Law Amendment Act, read together with Part IV of Schedule 2, thereto. The charge sheet did not make reference to the Criminal Law Amendment Act, nor did the court exercise its powers in terms of s 86 of the Criminal Procedure Act, to invite the State to amend the charge before judgment. With regard to sentence the SCA found that the appellant was not given an opportunity to address the court as to the applicability of the provisions of the Criminal Law Amendment Act when sentencing the appellant.

The SCA found that the irregularities in the conviction and sentencing of the appellant in terms of the Criminal Law Amendment Act could not be said to be so gross to have resulted in the failure of justice. It found that the evidence and credibility findings by the trial court proved the commission of a crime of housebreaking with intent to commit a crime unknown to the State.

Finally, the SCA reconsidered the sentence afresh, as it found that the sentence of ten years imprisonment imposed by the trial court was erroneously influenced by the application of the provisions of the Criminal Law Amendment Act.

The sentence of ten years imprisonment was set aside and the appellant was sentenced to a more appropriate sentence of five years imprisonment which was antedated to 17 July 2015.

**END**