



## 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:** 14 March 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***

*Director of Public Prosecutions, Kwazulu-Natal Pietermaritzburg v Ndlovu (888/2021) [2024] ZASCA 23 (14 March 2024)*

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Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Kwa-Zulu Natal Division of the High Court, Pietermaritzburg (high court). The order of the high court was substituted with an order dismissing the appeal against the sentence imposed by the regional court, and reinstated the sentence of life imprisonment that the regional court had imposed as a court of first instance. The appeal revolved around the imposition of a life sentence for the brutal rape of a young woman. She was gang raped by three men, but only the respondent appeared before the trial court.

Upon appeal to the high court, the court dismissed the appeal against convictions but upheld the appeal against the sentence of life imprisonment based on reasoning emanating from a previous judgment of the SCA, *Mahlase v The State* [2013] ZASCA 191 (*Mahlase*). *Mahlase* was premised upon the SCA's interpretation of s 51 of the Criminal Law Amendment Act 105 of 1997 (the 1997 Act), namely that a minimum sentence of life imprisonment must be imposed for rape, if the victim had been raped more than once either by a lone perpetrator or several perpetrators. The SCA in *Mahlase* found that the minimum sentence for rape was not applicable where the rape was perpetrated by more than one person, but only one of them was before court. Accordingly, the high court, in keeping with the doctrine of *stare decisis*, which enjoins courts to follow past decisions and also those of courts above them, substituted the sentence of life imprisonment with one of 15 years.

The cardinal issue before the SCA was whether its previous decision in *Mahlase* was correct. This Court examined the principles relating to interpretation of statutes, as well as the doctrine of precedent and held that the SCA can overturn its own decisions, but only if it is convinced that the decision was clearly wrong. Furthermore, this Court recognised that the implications of *Mahlase* caused consternation throughout the various Divisions of the High Court, as judges understood the dictum to be binding, although subject to trenchant criticism. After considering case law on the matter, this Court held that the appeal hinged on the wording of s 51 at the relevant time and examined the matter from this perspective (the 1997 Act had been amended in the meantime).

This Court emphasised the importance of statutory interpretation and the correct approach to interpretation of legislation by considering the language used in the provision in light of the overall scheme of the legislation and its context. This Court considered s 51 in light of the prevailing South African context, namely one where the scourge of rape and sexual violence showed no signs of abating, as well as in light of the values enshrined in the Constitution of the Republic. The Court held that, in light of the aforementioned, the manner in which s 51 was couched was clear: it provided that a sentence for life imprisonment was to be imposed for certain specified offences and that the imposition of a life sentence was not to be departed from 'lightly and for flimsy reasons which could not withstand scrutiny'. This Court, after having carefully and thoroughly analysed *Mahlase*, found that it could not withstand scrutiny and concluded that the judgment and its reasoning was clearly wrong.

In the result, the SCA upheld the appeal and substituted the order of the high court with one dismissing the appeal also against the sentence imposed by the regional court and reinstating the sentence of life imprisonment.

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