



## 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:** 7 June 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***

*Mabena v The State* (Case no 709/2022) [2024] ZASCA 89 (7 June 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the decision of the Gauteng Division of the High Court, Johannesburg (the high court), which dismissed an appeal against the sentence imposed by the Regional Court, Johannesburg (the trial court), of the appellant, Mr Vusi Mabena.

The appellant (accused 1 in the trial court) together with his co-accused, Mr Mpumelelo Ncube (accused 2 in the trial court), was charged with robbery with aggravating circumstances and attempted murder read with s 52(2)(a) of the Criminal Law Amendment Act 105 of 1997 (minimum sentence legislation). The property involved was a Sony Ericson cellphone, laptop computer, airtime vouchers, cash, a gold chain and a wallet, of which all items were recovered except the cellphone. They were both convicted on both counts by the trial court. In respect of the appellant, pursuant to his conviction of robbery with aggravating circumstances was sentenced to 15 years' imprisonment as a first time offender and to five years' imprisonment in respect of attempted murder, in accordance with the minimum sentence legislation. In His co-accused, as a second offender in respect of his conviction of robbery with aggravating circumstances was sentenced to 20 years' imprisonment and for his conviction of attempted murder to 5 years' imprisonment, which sentences were ordered to run concurrently. The trial court granted the appellant and his co-accused leave to appeal to the full bench of the high court. The high court dismissed the appeals of the appellant and his co-accused against their convictions and sentences. The SCA granted the appellant leave to appeal against his sentence only.

The SCA held that the high court regrettably misinterpreted the sentence imposed by the trial court by incorrectly finding that the trial court ordered the appellant's sentence of five years' imprisonment to run concurrently with his sentence of 15 years' imprisonment and that his effective sentence was therefore 15 years' imprisonment.

The SCA held further the fact that the attempted murder was committed immediately after the robbery while the appellant and his co-accused were attempting to flee the scene, were closely related in time and locality in addition to the fact that the appellant spent four years and four months in prison pending the finalisation criminal trial, were weighty factors which should have compelled the trial court to order that the sentences run concurrently.

Accordingly, the SCA held that the appeal against sentence succeeded. Further, the sentence imposed by the trial court was set aside and replaced with an order that the sentences of 15 years' in respect of the conviction of robbery with aggravating circumstances and five years' in respect of the conviction of attempted murder, were to run concurrently.

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