

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**S v Dzukuda and others**

**Case CCT 23/00**

**Decided on 27 September 2000**

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**Media Summary**

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The judgment in these two cases concerns the constitutionality of a procedure whereby a regional court is empowered to refer a criminal trial to the High Court for sentencing if the regional court is of the view that a punishment in excess of its jurisdiction is merited. This gives rise to what is called a "split procedure" where one court determines guilt and another sentence.

The three accused were found guilty of the rape of girls under the age of 16 years. In respect of that crime, section 51 of the Criminal Law Amendment Act of 1997 provides that life imprisonment must be imposed unless "substantial and compelling" grounds exist justifying a lesser sentence. The High Court held that the provisions of the Act which establish the split procedure limit the right to a fair trial which is guaranteed by the Constitution and are therefore constitutionally invalid.

This Court, in a unanimous judgment by Justice Ackermann, declined to confirm the ruling of unconstitutionality. It held that the High Court had overstated the benefits which a trial judge has in assessing an appropriate sentence and the corresponding concern that the judge in the High Court was not in as good a position to do so. While the split procedure might not be ideal, it was not unfair. There is nothing in the provisions giving rise to the split procedure which compels the High Court to use its powers in a manner which might be unconstitutional.

Justice Ackermann held further that the sentencing procedure involves a weighing up of the various relevant criteria in the light of all the facts of the case in order to determine an appropriate sentence. The atmosphere of the trial could have little weight in this process. Finally, Justice Ackermann held that the split procedure did not result in a delay which limited the convicted person's right to a trial without an unreasonable delay.

The cases were referred back to the High Court, with the applicants to remain in custody until that time.