



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: 29 November 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

Loyiso Ludidi & Others v The State (983/2022 and 056/2024) [2024] ZASCA 162 (29 November 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the Western Cape Division of the High Court, Cape Town (the high court).

On 23 June 2016, two of the appellants entered into the Kwaza household and delivered two fatal gunshots to Mr Pasika Kwaza (the deceased) while in bed with his wife Ms Patience Kwaza (Ms Kwaza). Originally, this was a planned hit targeted on Ms Kwaza (who, upon being informed by one of the appellants employed to execute the hit,) changed the target to the deceased and took over the responsibility to pay the appellants. The attack resulted in the deceased being shot twice in the head and various items stolen from the household. The high court, on 22 May 2022, convicted the appellants of murder and robbery with aggravating circumstances and Ms Kwaza for murder only.

Before the high court, Ms. Kwaza, for her murder conviction, was sentenced to 12 years' imprisonment, following the reduced moral blameworthiness and consideration of the period she spent detained pre-sentencing.

The appellants on the other hand were sentenced to life imprisonment, in terms of the minimum sentence contemplated in s 51 of the Criminal Law Amendment Act 105 of 1997 (CLAA), which was the genesis of this appeal. The issue before the SCA was whether the appellants' lengthy period spent in detention should be considered substantial and compelling circumstances justifying a lesser sentence, as provided for by s 51(3)(a) of the CLAA. The appellants, like Ms Kwaza, had spent close to six years awaiting their sentencing.

The SCA held that that the period spent in custody before conviction and sentencing is not on its own, a substantial and compelling circumstance it is merely a factor in determining whether the sentence imposed is disproportionate and unjust.

The SCA held further that the extensive period of time spent awaiting sentencing was significantly due to delays by the appellants. These delays were attributed to the appellants' unsuccessful bail applications and absenteeism by their legal representatives on other accounts.

The SCA concluded that the high court did not misdirect itself when it found that the lengthy pre-sentencing incarceration period did not amount to substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence of life imprisonment. The SCA dismissed the appeal.

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