



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Mathekga and Another v S (Case no 717/2019) [2020] ZASCA 77 (30 June 2020)

From: The Registrar, Supreme Court of Appeal

Date: 30 June 2020

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.

Today the Supreme Court of Appeal (SCA) dismissed the appellants' appeal against conviction and sentence per the order of the honourable Smith AJ, sitting as the court of first instance in the Gauteng division of the High Court, Johannesburg. At the heart of the appeal was the pervasive use of lethal force by the police in South Africa.

The appellants, who were themselves police officers, armed with an R5 assault rifle and Z88 9mm pistol, shot two police officers and a civilian as well as minibus taxis and motor vehicles parked alongside the pavement in the centre of Johannesburg, Hillbrow at the taxi rank. In the aftermath of the shooting, there were twenty-nine spent cartridges found on the scene which caused the death of one police officer, serious injuries to a second police officer and a bystander and also caused damage to the minibus taxis and motor vehicles. The appellants appeared in the Gauteng Division of the High Court, Johannesburg where they raised the defence of the provisions of section 49(2) of the Criminal Procedure Act 51 of 1977, which grants indemnity for the use of lethal force to effect an arrest. The high court, nonetheless, on the evidence, convicted both appellants for murder, two counts of attempted murder and malicious damage to property and effectively sentenced each to 15 years' imprisonment.

The SCA confirmed the conviction on murder with direct intention in respect of both appellants. In arriving at its decision, the SCA restated the law; referred to decisions of *Govender v Minister of Safety and Security (SCA)* and *Walters v Minister of Safety and Security (CC)*. In *Walters*, the Constitutional Court emphasised the duty of the state to lead by example in upholding and protecting the right to life and dignity.

In respect of sentence, the SCA unanimously held that the trial court committed a material error in applying s 51 (1) instead of s 51(2). This obliged the SCA to reconsider sentence afresh. It reflected upon the aggravating factors, the appellants as offenders and the victims

of the offences as part of society. The majority (Cachalia, Mocumie, Mokgohloa and Dlodlo JJA concurring), imposed thirteen years' imprisonment in the place of fifteen years' imprisonment. The minority (Makgoka JA) would have imposed a sentence of correctional supervision. If he were to consider a prison term, he would have imposed between 8 and 10 years' imprisonment, half of which would be suspended.