



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: 23 April 2021

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

Alfred Jan Bezuidenhout v The State (41/2020) [2021] ZASCA 52 (23 April 2021)

Today the Supreme Court of Appeal (SCA) upheld the appellant's appeal against an order of the Gauteng Division of the High Court, Johannesburg.

This matter has its genesis in the Regional Court, Vosloorus, where the appellant was convicted of murder of one Bisani Tshukela (the deceased) and the illegal possession of a 38 calibre revolver. The appellant was sentenced to 15 years and 8 years imprisonment, respectively, and the sentences were ordered to run concurrently, an effective term of 15 years.

The appellant was refused leave to appeal by the trial court. So too, was an application in terms of s 309B(5) of the Criminal Procedure Act 51 of 1977 (the CPA) to adduce further evidence. On petition to the High Court, Gauteng Division, the appellant was granted leave to appeal against the sentence only. In his application for leave to appeal the conviction for murder to the SCA, he also sought an order that the case be remitted to the regional court for further evidence to be heard. He was granted special leave by the SCA to appeal the merits of his conviction.

The central question before the SCA was whether the appellant had a fair trial. At his first appearance, the appellant appeared in person. Although his right to legal representation was explained to him, he elected to appear in person. At a later stage the appellant appointed a legal representative from Legal Aid however, the attorney did not appear on behalf of the appellant save on one occasion where she appeared and confirmed that the appellant did not require the court to sit with assessors. When the matter was set down for trial the attorney remained absent. The appellant addressed the court stating that he did not wish to have an attorney and had only done so on the court's advice, and he wished to finalise the matter. The court then concluded that that it was his right to conduct his own defence, but informed him that he would have to lead and cross-examine witnesses and was further advised of his right to appoint an alternative attorney.

The SCA held that while the trial court had been cognisant of the need to explain fully to the appellant the consequences of declining legal representation at the outset of the trial, at the end of the state's case, the court merely reminded the appellant that he had the right to testify and to call witnesses and that they would be cross-examined by the prosecutor. Notwithstanding the technical nature of some of the state's evidence, it was not drawn to the attention of the appellant that the expert evidence may need to be rebutted by an expert witness. Nor was it suggested to him that in light of the evidence led by the state that he should reconsider whether he required legal

representation. The SCA held further that the importance of the forensic evidence, and its possible impact on the eventual outcome of the trial, should have been fully explained to the appellant. As a layperson, and from a perusal of the record, it was clear that the appellant did not have sufficient skill and expertise to understand what countervailing evidence was required and where he may procure evidence of such a specialised nature. The magistrate, after explaining the consequences of the evidence, should have asked the appellant whether he wished to call expert witnesses in rebuttal, and if necessary, assisted him in doing so. It would also have been apt at that stage to suggest to the appellant that he reconsider his stance on legal representation, once faced with evidence of a technical nature. The magistrate's failure to adopt either course of action, said the SCA, rendered the trial unfair.

This could have been remedied when the appellant applied for leave to appeal and made an application to adduce further evidence in term of s309B(5) of the CPA. The appellant sought to call two expert witnesses who could have cast doubt on some of the evidence of the state witnesses. The magistrate dismissed the application on the basis that he had already disbelieved the appellant's version and therefore the proposed evidence would have no impact on the outcome of the matter.

In view of the above, the SCA upheld the appeal, set aside the appellant's conviction and sentence, and ordered that the trial should start *de novo* in the Regional Court, Vosloorus, before a different magistrate.

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