



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Okah v S (19/2014) [2016] ZASCA 155 (3 October 2016)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) upheld only in part an appeal by Mr Henry Emomotimi Okah against his convictions on a number of charges under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (the Act), imposed by the South Gauteng High Court, Johannesburg. As a result, Mr Okah's convictions on five of thirteen counts were set aside, and an effective sentence of 24 years' imprisonment was reduced to an effective 20 years' imprisonment.

The two issues before the SCA were (i) whether the court below had jurisdiction to try Mr Okah on each of the various charges against him; and (ii) whether, in respect of count 13, the evidence adduced by the State was sufficient to prove his guilt beyond a reasonable doubt.

Mr Okah was charged with 13 counts of terrorism-related offences under the Act, following on two separate bombings in Nigeria, as a result of which 12 people were killed, 64 severely injured and property was damaged. Mr Okah had allegedly been involved in the planning and execution of these bombings. Six counts related to the first bombing, in Warri, Nigeria, on 15 March 2010. Six counts related to the second bombing, in Abuja, Nigeria, on 1 October 2010. And count 13 related to an allegation that Mr Okah had threatened certain South African entities in Nigeria with destabilising terrorist activities.

Before the SCA, Mr Okah accepted the correctness of the factual findings of the court below in respect of the convictions on counts 1 to 12, and also abandoned a constitutional challenge against the provisions of the Act. On appeal, Mr Okah's argument in respect of the first 12 counts was solely

that the court below had no jurisdiction to try him, because the bombings had taken place outside of South Africa.

The SCA held that, on a proper interpretation of the Act, a South African court would have extra-territorial jurisdiction if the provisions of either s 15(1) or s 15(2) were applicable. On the facts, s 15(2) did not apply to any of the counts, and so extra-territorial jurisdiction would only apply if the requirements of s 15(1) were met. Essentially, this section grants extra-territorial jurisdiction in respect of financing offences, ie offences related to the financing of terrorist activities, and applies regardless of where the financing occurred. In addition, however, the SCA noted that a South African court could have jurisdiction where the ordinary requirements of territorial jurisdiction were met.

In relation to the Warri bombings, the SCA held that the court below did not have jurisdiction in respect of four of the six counts, because these offences had taken place outside of South Africa and were not financing offences (and therefore s 15(1) did not apply). Accordingly, the convictions on these counts were set aside. However, in relation to the other two counts, the SCA held that the court below did have jurisdiction. One count was a financing offence, and the other count consisted of actions taken wholly within South Africa, and therefore the court could assert its conventional territorial jurisdiction.

In relation to the Abuja bombings, the court held that Mr Okah had conspired, planned and instructed people in relation to the execution of the bombing in Abuja whilst in South Africa. Therefore, the court below had jurisdiction in respect of all six counts on the basis of its ordinary territorial jurisdiction.

Finally, in relation to count 13, Mr Okah's challenge was that the evidence adduced by the State did not prove beyond a reasonable doubt that he was responsible for the threats made against the South African entities in Nigeria, which took the form of an email sent in the name of another person while Mr Okah was in custody. The SCA upheld this challenge and set aside that conviction and sentence.

Having set aside these convictions, it was necessary for the SCA to amend Mr Okah's sentence accordingly. The court below had taken the counts in relation to each of the two bombings together for purposes of sentencing, and had sentenced Mr Okah to 12 years' imprisonment in respect of the Warri bombing and 12 years' imprisonment in respect of the Abuja bombing.

On appeal, the SCA did not interfere with the sentence for the Abuja bombing, but reduced the 12 years' in respect of the Warri bombing to 8 years' imprisonment. This resulted in an effective 20 years' imprisonment.

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