

**REPUBLIC OF SOUTH AFRICA**



**IN THE GAUTENG HIGH COURT  
LOCAL DIVISION, JOHANNESBURG**

**CASE NO: A07/2014**

In the matter between

**DECEMBER OSCAR MOKHARI**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

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**S U M M A R Y**

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Criminal Procedure – Sentence – Appeal against sentence – conviction of rape - life imprisonment imposed - Substantial and compelling circumstances - section 51 of Act 105 of 1977 read with Schedule 2 Part 1 - complainant testified having been raped more than once - charge sheet although correctly referring to sections of minimum sentence legislation wrongly alleged facts that appellant was in possession of weapons as circumstances bringing him within the minimum sentence regime of life imprisonment – no reference to the complainant having been raped more than once - Regional Magistrate - duty of presiding officer to correct apparent misunderstanding or misconception of legal representative concerning applicability of the minimum sentence provisions - failure to do so infringing on appellant's Constitutional right to a fair trial - held: Schedule 2 Part 1 not applicable - sentence of life imprisonment set aside and substituted with a sentence of 15 years' imprisonment.

Sentence - robbery with aggravating circumstance - appeal against sentence of 17 years' imprisonment - substantial and compelling circumstances - section 51 of Act

105 of 1977 - nature and circumstances of crime considered - absence of violence - no injuries sustained by complainant - court a quo's failure to consider these constituting a misdirection – sentence unduly harsh - finding that no substantial and compelling circumstances existed set aside - sentence of 12 years' imprisonment imposed - concurrency ordered resulting in effective period of 18 years' imprisonment