



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE  
SUPREME COURT OF APPEAL**

29 September 2011

STATUS: Immediate

**FANIE MASENYE MOSWATHUPA V THE STATE**

*Please note that the media summary is intended 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) upheld an appeal against sentence by the appellant, Fanie Masenye Moswathupa, and set aside an order of the North Gauteng High Court (Pretoria).

The appellant stood trial on seven charges in the Regional Court, Pretoria and was convicted on four of the charges, namely housebreaking with intent to rob and robbery with aggravating circumstances (count 2); rape (count 4); housebreaking with intent to rob and robbery (count 5) and housebreaking with intent to commit an offence to the prosecutor unknown (count 6). The appellant was sentenced to 15 years' imprisonment in respect of counts 2, 4 and 5 and to ten years' imprisonment in respect of count 6. The appellant appealed to the high court, which set aside the convictions on counts 2 and 4 and confirmed the convictions and sentence on counts 5 and 6. The high court, however, altered the conviction on count 6 to one of housebreaking with intent to commit theft. The appellant thereafter appealed, with leave of the high court, to the SCA against the sentence imposed.

The SCA held that there was a clear misdirection by the regional court in that it failed to take into account the mitigating factors operating in favour of the appellant; namely that the appellant was a first offender, the appellant spent 34 months in custody awaiting trial, and lastly that the trial court over-emphasised the seriousness of the offence of housebreaking and the interests of society.

The SCA stated that although the regional court restated the established principles regarding sentence, it failed to apply them to the particular circumstances of the appellant. The SCA further held that the cumulative sentence of 25 years' imprisonment imposed on the appellant was shockingly inappropriate. The SCA concluded that an effective term of 16 years' imprisonment was just and fair under the circumstances.

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