



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 September 2011

STATUS: Immediate

FAKUDE V THE STATE (852/10)

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

The Supreme Court of Appeal (the SCA) today upheld an appeal from KwaZulu-Natal High Court, Pietermaritzburg and set aside the sentence imposed by the Pinetown Regional Court.

The appellants were convicted for robbery with aggravating circumstances and sentenced to 20 and 25 years imprisonment respectively. On appeal to the High Court, the Court confirmed the convictions and sentences imposed on them

The issues on appeal were whether the trial court erred by invoking the provisions of the Criminal Law Amendment Act 105 of 1997 as the charge sheet did not indicate that it should be read with the provisions of the Act and whether the trial court exceeded its jurisdiction by imposing a sentence of 20 and 25 years imprisonment on the appellants respectively whilst the Act was not applicable.

The SCA accepted without deciding the issue that the Criminal Law Amendment Act was not applicable. The SCA stated that regional courts are creatures of statute and cannot exercise powers beyond those expressly conferred in the provisions of s 92 (1) (a) of the Magistrate's Court Amendment Act, 120 of 1993 which provide that a regional division may impose an imprisonment term not exceeding 15 years. The SCA held that it is clear that the trial court by imposing the sentences of 20 and 25 years exceeded its penal jurisdiction. The SCA held that this misdirection entitled the court to interfere with the sentences imposed by the trial court.

The SCA in evaluating the mitigating and aggravating factors concluded that the aggravating factors exceeded the mitigating factors and deemed the imposition of a substantial custodial sentence as appropriate. The SCA found 15 years imprisonment for each appellant as fair in the circumstances of the case.

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