



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

MUZIWENHLANHLA SMANGA MTHIMKHULU v THE STATE

The Supreme Court of Appeal (SCA) today upheld an appeal by Mr Mthimkhulu against the order of the KwaZulu-Natal High Court, Pietermaritzburg in terms of which the high court had fixed a non-parole period of 13 years in respect of the effective period of 20 years' imprisonment imposed on the appellant.

The high court said that it was enjoined to fix a non-parole period because: (a) the appellant had been convicted of more than one offence; and (b) the sentences imposed were ordered to run concurrently. It reasoned that the word 'shall' in s 276B(2) has an imperative connotation in contrast with the word 'may' used in s 276B(1)(a) which has a permissive connotation.

However, the SCA found that on a proper interpretation of s 276B and having regard to the preamble to the Parole and Correctional Supervision Amendment Act 87 of 1997 which introduced s 276B after the SCA had disapproved the fixing of non-parole periods by sentencing courts viewing such emerging practice as an undesirable incursion into the domain of another arm of the state – s 276B(2) does not oblige a sentencing court to fix a

non-parole period as a matter of course and that this section is triggered only when a sentencing court has exercised a discretion under s 276B(1)(a) to fix a non-parole period.

The SCA also held that before a sentencing court may fix a non-parole period as envisaged in s 276B such court must afford the parties an opportunity to address it and that a failure to do so would constitute an irregularity.

The SCA set aside the non-parole period fixed by the high court. The SCA also declined counsel's invitation to remit the matter to the high court for the latter court to consider the matter afresh holding that the interests of justice would not be served by doing so. The SCA held that a court should only exercise its discretion to impose a non-parole period in exceptional cases. No exceptional circumstances exist in this case.