



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 26 November 2014
STATUS Immediate

M K Nkomo v The State
(979/2013) [2014] ZASCA (26 November 2014)

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) delivered a judgment upholding the appeal by the appellant, M K Nkomo, setting aside his conviction and sentence and ordering that the matter be remitted to the trial court for further evidence.

The issue before the SCA was whether special and exceptional circumstances were present to warrant the remittal of the matter to the trial court for the hearing of new or further evidence.

The appellant was convicted for the rape of a young girl in the regional magistrate's court, Bethlehem, on 30 August 2010 and sentenced to 15 years' imprisonment. On the same day the regional court granted the appellant leave to appeal to the Free State High Court, Bloemfontein against his conviction only. Before the appeal was heard, the appellant lodged an application in terms of s 22 of the Supreme Court Act 59 of 1959 for the matter to be remitted to the regional court for the hearing of further evidence in the form of a letter in which the complainant recanted her earlier testimony that she was raped by the appellant.

On appeal, the SCA found that, prima facie, there was evidence establishing that the evidence originally given could be false.

The SCA also found that having regard to the contents of the complainant's letter, the manner in which it was written, how it came into the possession of the appellant and the prima facie likelihood of the truth of its contents to the effect that she was coerced into giving false evidence by her step-

mother and one other, these were exceptional circumstances which justified the re-opening of the case and the leading of this evidence. For these reasons, the SCA held that the matter should be remitted to the trial court.

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