



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, 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.

SIXTUS NHLANHLA MKHIZE V THE STATE

The Supreme Court of Appeal (SCA) today unanimously quashed and set aside the conviction imposed upon the appellant in the Kwazulu-Natal High Court. The appellant had been found guilty of murder and sentenced 12 years' imprisonment.

The appeal arises from events which occurred in the early hours of 17 May 2003. The appellant had been the subject of a brutal assault by the deceased, who he shot and killed in response. The trial court found that the appellant shot the deceased out of revenge taking into account the gunshot wound on his back, from which it inferred that it struck the deceased after he turned his back to flee. The court a quo found that the trial court could not be faulted on this finding.

The appellant argued that the State had not proven beyond a reasonable doubt that the appellant intentionally and unlawfully killed the deceased – ie that he did not act in private

defence or in terms of a putative private defence - and contended that the worst he could be guilty of on the evidence is culpable homicide.

The SCA upheld the appellant's case that the evidence could not support a conviction on the verdict of murder. It then turned to consider the matter of whether the appellant had acted lawfully in private defence or putative private defence. On this score, the court found that the lethal force used had not been necessary to deter the threat that the deceased posed to him. The appellant, a long serving police officer with considerable experience in handling firearms, ought to reasonably have realised that he was using excessive force beyond the legitimate bounds of private defence.

In the result, the conviction on the count of murder was replaced with one of culpable homicide. Taking into account certain mitigating factors, including the role that the deceased played in precipitating his own demise, a term of 5 years' imprisonment wholly suspended, conditionally was imposed.

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