



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 27 May 2016
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Mfundo Nontshinga v S (770/2015) [2016] ZASCA 76 (27 May 2016)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) gave reasons for an order given on 4 May 2016, in terms of which an appeal by Mr Mfundo Nontshinga and three others was struck from the roll.

The issue before the SCA was whether it could hear an appeal against a refusal by a Division of the High Court of a petition for leave to appeal, where (i) the appellants had not first sought leave to appeal against the refusal from that Division, and (ii) the procedure was governed by the Supreme Court Act 59 of 1959.

The appellants were all convicted on a number of counts by the Regional Court in Port Elizabeth, including counts of unlawful possession of a fire arm and unlawful possession of ammunition.

The appellants petitioned the Eastern Cape Division, Grahamstown, for leave to appeal against their convictions and sentences, which petition was refused. The appellants then applied to the SCA for special leave to appeal against their convictions on the unlawful possession charges, which special leave was granted.

The SCA held that, in terms of the procedure applicable at the time (which was governed by the Supreme Court Act 59 of 1959), the refusal of the petition for leave to appeal by the Eastern Cape Division was only appealable to the SCA with the leave of that court, or (where leave was refused) with the leave of the SCA.

In the absence of any application to the Eastern Cape Division for leave to appeal against its refusal, the SCA had no jurisdiction to grant special leave to appeal to it, and accordingly its prior order was a nullity.

Accordingly, the SCA struck the matter from the roll.

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