



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 02 December 2019

**STATUS** Immediate

*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.*

### **Oosthuizen & Another v The State (180/2018) [2019] ZASCA 182**

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Today the Supreme Court of Appeal (SCA) upheld the appeal against the order and judgment of the Gauteng Division of the High Court, Pretoria, sitting in Middelburg. This concerned a matter which in 2016 captured wide public attention resulting in a news article led by the Sun, a tabloid newspaper, headlined ‘Burn in the coffin!’. A video recording of the incident relating to the news article went viral on various social media platforms, which set the wheels of justice in motion. The matter was later dubbed ‘The Coffin case’.

The events led to the arrest of Willem Jakobus Albertus Oosthuizen (Oosthuizen) and Theo Martinus Jackson (Jackson). They appeared before the trial court on charges of unlawful possession of a firearm in contravention of the provisions of the Firearms Control Act 60 of 2000 read with the provisions of the Criminal Law Amendment Act 105 of 1997, two counts of assault with intent to do grievous bodily harm, kidnapping, attempted murder, intimidation and defeating the ends of justice. They were convicted of all the charges except that Oosthuizen, who was charged with the unlawful possession of a firearm, was acquitted in respect of that charge.

They were subsequently sentenced as follows: on counts 2 and 3, both being assault with intent to do grievous bodily harm, they were sentenced to three years’ imprisonment in respect of each count; on count 4, kidnapping, they were sentenced to five years’ imprisonment; on count 5, attempted murder, they were sentenced to seven years’ imprisonment; on count 6, intimidation, they were sentenced to six years’ imprisonment; and Jackson, who also faced the charge of defeating the ends of justice (count 7) was sentenced to three years’ imprisonment.

They both sort leave to appeal their convictions and sentence to the trial court, which refused their application. They subsequently petitioned the SCA for leave to appeal. The SCA granted them leave to appeal against their convictions and sentence on 2 February 2018.

The facts were that the accused accosted the plaintiffs, Mr Sithole and Mr Mlotshwa, in different stages. They brutally assaulted them with booted feet and clenched fists, and at some point in the case of Mlotshwa, with a knobkierie. Mlotshwa was also driven to a secluded ditch where he was further assaulted and forced into a coffin. The incident where Mlotshwa was forced into a coffin was also captured on video by the accused, which was later shared widely on social media.

The accused's version was that they never assaulted nor encountered Sithole. With regard to Mlotshwa, their evidence was that they did not intend to kill Mlotshwa at the ditch, their intention was to threaten him. They denied assaulting Mlotshwa in any way before he was forced into the coffin and denied that Mlotshwa sustained any serious injuries. They claimed that Mlotshwa was in possession of a bag containing copper cables; that he was apprehended with the intention to take him to the police, and that he begged to be disciplined by them rather than being taken to the police. The accused testified further that the amount of force exerted on Mlotshwa did not exceed that which appears in the video recordings. They accepted that they committed assault, took him to the ditch against his will, forced him into the coffin and uttered threats about the snake and the pouring of petrol over him.

The Supreme Court of Appeal held that the reading of the trial court judgment on conviction indicates that the trial court failed to apply the cautionary rule that applies to the evidence of single witnesses. Given the many improbabilities and contradictions in the plaintiffs' account, if the trial court had applied the necessary caution, it would not have accepted the plaintiffs' unsatisfactory evidence in all material respects.

The court found that the trial court should have determined the matter on the version of the accused. The video recordings and photographs corroborate their version. The court pointed out that it is clear that on the evidence of the accused, Mlotshwa was unlawfully deprived of his liberty and assaulted. The court held that the convictions of assault with intent to do grievous bodily harm as a competent verdict to a charge of attempted murder and kidnapping (count 5) as well as Jackson's convictions of defeating the ends of justice (count 7) should be confirmed. The convictions in respect of all the other offences should be set aside.

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